

Tuesday, May 17, 2011 – 9:30 A.M.

Open Session*

G.A.B. Board Room
212 East Washington Avenue, Third Floor
Madison, Wisconsin

The Board will convene in closed session after approving the minutes. The Board will return to open session at approximately 10:30 am listen to public comment and consider remaining open session items before returning to closed session.

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A. Call to Order	
B. Director's Report of Appropriate Meeting Notice	
C. Approval of Minutes of Previous Meeting	
1. March 22–23, 2011	3
D. Closed Session	
E. Public Comment 10:30 am (Limit of 5 minutes per individual appearance)	
Break	
F. Washburn Inquiry Relating to Voting Equipment Data Retention	11
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O.	Closed Session	
5.05 (6a) and 19.85 (1) (h)	The Board's deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.	
19.85 (1) (g)	The Board may confer with legal counsel concerning litigation strategy.	
19.851	The Board's deliberations concerning investigations of any violation of the ethics code, lobbying law, and campaign finance law shall be in closed session.	
19.85 (1) (c)	The Board may consider performance evaluation data of a public employee over which it exercises responsibility.	

The Government Accountability Board has scheduled its next meeting for Monday, May 23, 2011 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin, beginning at 9:00 am.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

Risser Justice Center, 120 Martin Luther King, Jr. Boulevard
Madison, Wisconsin
March 22, 2011
9:30 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
A. Approved Guiding Principals for Legislature in Moving Partisan Primary Date	2
B. Approved Recall Timetable and Guidelines	3
C. Approved Promulgation and Amendment of ch. GAB §1.28(3)(b)	5

Present: Judge Thomas H. Barland, Judge Gerald Nichol, Judge Gordon Myse, Judge Michael Brennan, Judge Thomas Cane, and Judge David Deininger

Staff present: Kevin Kennedy, Jonathan Becker, Nathaniel E. Robinson, Michael Haas, Sharrie Hauge, Diane Lowe, Sarah Whitt, Richard Bohringer, and Reid Magney

A. Call to Order

Chairperson Barland called the meeting to order at 9:30 a.m.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting. He also introduced Tiffany Schwoerer, who was recently promoted to a project-project position assisting with training, and Jo Futrell, who joined the Board staff in January as an election specialist focusing on accessibility for voters with disabilities.

C. Minutes of Previous Board Meetings

MOTION: Approve the amended minutes of the January 13, 2011 teleconference meeting of the Government Accountability Board. Moved by Judge Myse, seconded by Judge Brennan. Motion carried unanimously.

D. Recognition of Judge Myse

Kevin Kennedy presented Judge Myse with a plaque recognizing him for his exemplary service in ensuring and promoting public confidence in Wisconsin government as a member of the Government Accountability Board from 2008 to 2011, and serving as Board Chair in 2010. Judge Myse's term ends May 1, 2011, and he said he is not seeking re-nomination to a second term. Judge Myse stated that he appreciated the opportunity to serve on the Board and work with his colleagues on the Board as well as the staff.

E. Public Comment

Attorney Mike Wittenwyler of Madison appeared on his own behalf to discuss guidance for recall committees and incumbents regarding unlimited campaign contributions during the recall circulation period.

Discussion.

Paul Malischke of Madison appeared regarding the proposed online-assisted voter registration system, and asked that the system be open to people who have a Social Security number, but do not have a Wisconsin driver license or identification card.

Mary Ann Hanson of Brookfield appeared on her own behalf and asked questions regarding Administrative Rule GAB 1.28, and whether that affected her ability to communicate about her political beliefs.

John Washburn of Milwaukee appeared on his own behalf to discuss the destruction of election records and memory cards, and to urge the Board to do its own survey of clerks' practices regarding election records.

Dianne Herman-Brown of Sun Prairie appeared as President ~~on behalf~~ of the Wisconsin Municipal Clerks Association to express concerns about unfunded mandates and to encourage the Board to continue its use of clerk focus groups for their perspectives on changes in election procedures. She also spoke in support of continuing Election Day voter registration in Wisconsin.

F. Proposed Timetable for Moving Partisan (September) Primary

Elections Division Administrator Nathaniel E. Robinson introduced MOVE Act Elections Specialist Katie Mueller, who provided an oral and written report regarding recommendations for a new partisan primary date. The staff is not recommending a specific date, but is providing principles to guide the Legislature in choosing a new date that will comply with the Military and Overseas Voter Empowerment Act.

MOTION: Accept the staff report and endorse the four guiding principles in the written report for legislative consideration. In addition, that the Board direct staff to continue to work with the Legislature to develop a timetable for moving the September primary

consistent with federal requirements, while ensuring sufficient time for the Board and local election officials to certify candidates and prepare and deliver ballots. Moved by Judge Deininger, seconded by Judge Nichol.

Discussion.

MOTION: To amend the previous motion and recommend moving the partisan primary to the third or fourth Tuesday in July. Moved by Judge Cane.

Discussion.

Judge Cane withdrew the motion.

Motion carried unanimously.

The Board recessed at 10:44 a.m. and reconvened at 10:54 a.m.

G. Review Recall Timetable and Guidelines

Director Kennedy introduced Elections Specialist David Buerger and Campaign Finance Auditor Richard Bohringer to provide an oral and written report regarding the unprecedented number of recall efforts against Wisconsin state senators.

Discussion.

MOTION: Adopt staff's statutory and policy interpretations as outlined in the Board materials regarding the effective date for recall registration statements electronically filed on CFIS and the consequences for failure to provide a paper copy of the registration statement and statement of intent within 15 days of staff's request. Moved by Judge Myse, seconded by Judge Cane. Discussion. Motion carried unanimously.

Discussion.

MOTION: A qualified elector petitioner is specific to a recall registration and mandatory pursuant to §9.01(1) and (2)(d), Wis. Stats., and where a registered recall committee later files a subsequent recall registration with new and different qualified elector petitioners, the first and subsequent recall registrations are treated as separate and distinct recall registrations with separate 60-day circulation periods. Moved by Judge Myse, seconded by Judge Nichol. Discussion and a request by Judge Barland for staff to clarify the language. Motion carried unanimously.

Discussion.

MOTION: Adopt the March 3, 2011 memorandum from Kevin J. Kennedy titled "Circulation of recall petitions" as a formal campaign finance and ethics opinion of the

Board. Moved by Judge Deininger, seconded by Judge Nichol. Motion carried unanimously.

Discussion.

MOTION: Adopt the March 11, 2011 memorandum from Kevin J. Kennedy titled “Meaning of ‘Offer to File’ Recall Petition; Complete Dates Required for Each Individual Recall Petition Signature” as a formal elections opinion of the Board. Moved by Judge Myse, seconded by Judge Cane. Motion carried unanimously.

Discussion.

MOTION: Adopt the March 15, 2011 memorandum from Kevin J. Kennedy titled “Recall Expense Funds: Contribution Limits and Residual Recall Funds” as a formal campaign finance opinion of the Board. Moved by Judge Cane, seconded by Judge Myse. Motion carried unanimously.

Discussion.

The Board recessed for lunch at approximately 12:15 p.m. and reconvened at approximately 12:30 p.m.

Discussion.

MOTION: Affirm staff’s written ethics and use of government resources guidance found in the February 24, 2011 memorandum from Kevin J. Kennedy titled “Frequently Asked Questions: Recalls-Ethics/Use of Government Resources,” with clarification about activities on government time and property. Moved by Judge Cane, seconded by Judge Nichol. Motion carried unanimously.

H. Legislative Status Report

Staff Counsel Mike Haas provided an oral and written report. Staff has been responding to several legislative initiatives, including voter photo ID, which has generated many comments and e-mails from clerks. He said the date for the Partisan Primary and other issues may also be included in a larger election administration bill.

Discussion.

MOTION: That the Government Accountability Board go on record as supporting continuation of Election Day Registration in Wisconsin. Moved by Judge Deininger, seconded by Judge Brennan. Motion carried unanimously.

I. Administrative Rules

a. GAB 1.28 Relating to Scope of Campaign Finance Regulation

A written report from Staff Counsel Shane Falk was included in the Board packet. Staff Counsel Michael Haas made an oral presentation. On December 22, 2010, the Board adopted an Emergency Rule Order bringing ch. GAB §1.28 into conformity with a stipulation in *Club for Growth, Inc. v. Myse*, No. 10-CV-427, and with the representations that have been made to the Wisconsin Supreme Court, that the Board would not enforce the second sentence of GAB §1.28(3)(b). Staff now recommends that the Board authorize requesting two 60-day extensions of the emergency rule ch. §1.28(3)(b).

Discussion.

MOTION: Pursuant to §227.24(2), Wis. Stats., direct staff to request all permitted extensions of Emergency Rule ch. GAB §1.28(3)(b).

MOTION: Pursuant to §§5.05(1)(f), 227.11(2)(a), and 227.135, Wis. Stats., the Board approves the Statement of Scope found in the Board packet for the amendment of ch. GAB §1.28(3)(b), Wis. Admin. Code.

MOTION: The Board approves the Notice of Proposed Order Adopting Rule and Notice of Hearing Amending ch. GAB §1.28(3)(b).

MOTION: The Board directs staff to proceed with promulgation of rule ch. GAB §1.28(3)(b), subject to any new rule-making requirements that may be imposed by enactment of AB 8 (January 2011 Special Session).

All motions moved by Judge Nichol, seconded by Judge Cane. Discussion. Motions carried unanimously.

b. Status Report on Pending Administrative Rules

Staff Counsel Michael Haas discussed changes in administrative rulemaking proposed by the Governor, as well as other pending administrative rules.

J. Director's Report

Elections Division Report – election administration

A written report from Nathaniel E. Robinson was included in the Board packet. Mr. Robinson gave an oral presentation, and discussed staff preparations for the elections on February 15, April 5 and May 3, Four-Year Voter Record Maintenance, and the enhanced

online voter registration program. He noted the work of Lead Elections Specialist Diane Lowe in designing ballots for the special elections.

Ms. Lowe gave an oral presentation regarding the electronic canvass system. SVRS User Acceptance Testing Lead Ann Oberle gave an oral presentation regarding the Four-Year Voter Record Maintenance. SVRS Functional Team Lead Sarah Whitt gave an oral presentation regarding the online-assisted voter registration program.

The Board discussed Paul Malischke's suggestion that the online voter registration program be usable for persons who have a Social Security number, but not a driver license or state identification card. Consensus of the Board was not to limit the online-assisted voter registration program to persons with a driver license or state ID. Kevin Kennedy said staff would come back to the Board at its May meeting with a proposal.

Ethics and Accountability Division Report – campaign finance ethics, and lobbying administration

A written report from Ethics and Accountability Division Administrator Jonathan Becker was included in the Board packet. Mr. Becker presented an oral report. He discussed the yeoman's work the Ethics and Accountability Division staff has been doing while short-staffed. He also discussed the status of the January 2011 Continuing Reports, lobbying registrations, and the proposal to abolish matching funds for Supreme Court candidates in the Governor's budget.

Discussion.

Judge Myse asked about a recent critical report by a public interest group regarding the state's financial transparency and the Contract Sunshine website. Public Information Officer Reid Magney said that the report covered the state's entire transparency efforts, not just Contract Sunshine.

Office of Director and General Counsel Report – general administration

A written report from Kevin J. Kennedy, Sharrie Hauge and Reid Magney was included in the Board packet. Mr. Kennedy further discussed Contract Sunshine, and noted that the G.A.B. has improved the program significantly, and that there is now a high level of compliance by state agencies. Ms. Hauge noted that the Legislature gave the Board \$11,000 for the program, and the Board is spending more than that on Contract Sunshine.

Mr. Kennedy also noted that the Governor's proposed budget did not include making 20 of the Board's 26 project positions permanent. The Government Accountability Candidate Committee is scheduled to review applicants for the vacant Board seat on April 5, 2011.

Discussion.

K. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees, confer with counsel concerning pending litigation, and consider performance evaluation data of a public employee over whom the Board exercises responsibility.

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin's lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation and consider performance evaluation data of a public employee of the Board. Moved by Judge Brennan, seconded by Judge Barland.

Roll call vote: Brennan:	Aye	Cane:	Aye
Deininger:	Aye	Myse:	Aye
Nichol:	Aye	Barland:	Aye

Motion carried.

Hearing no objection, Chairperson Barland called a recess at 3:08 p.m. The Board reconvened in closed session beginning at 3:15 p.m.

Summary of Significant Actions Taken in Closed Session:

- A. Investigations and Enforcement: Eighteen pending matters considered; 12 matters closed, one matter dismissed, no investigations authorized, one lawsuit authorized.
- B. Litigation: Six pending matters considered.

The Board recessed at 5:41 p.m., reconvened at 9:02 a.m. Wednesday, March 23, 2011 and returned to closed session, at the Government Accountability Board office. The Board adjourned in closed session at 11:46 a.m.

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The next regular meeting of the Government Accountability Board is scheduled for Tuesday, May 17, 2011, at the G.A.B. offices located at 212 East Washington Avenue, Third Floor, in Madison, Wisconsin beginning at 10 a.m.

March 22, 2011 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 4, 2011

March 22, 2011 Government Accountability Board meeting minutes certified by:

Judge Gordon Myse, Board Secretary

May 17, 2011

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:

Shane W. Falk, Staff Counsel

SUBJECT: Washburn Inquiry: Retention of Electronic Election Materials

Introduction:

On April 15, 2011, Mr. John Washburn submitted an inquiry of the Board via a letter and materials which follow this Memorandum. Mr. Washburn has made hundreds of open records requests of counties and municipalities across the State of Wisconsin seeking the electronic contents of the removable memory devices used in voting systems at certain wards for the following elections: September 14, 2010, November 2, 2010, February 15, 2011, and April 5, 2011. Since approximately 2008, Mr. Washburn has made dozens of similar open records requests of counties and municipalities.

Mr. Washburn's letter to the Board presents several inquiries regarding Board policy involving counties' and municipalities' retention of the electronic contents of removable memory devices used in multiple voting systems in Wisconsin. In his materials, Mr. Washburn provides several examples of responses to his open records requests that he received from certain counties and municipalities. He expresses concerns regarding the compliance with state and federal retention laws by counties, municipalities, and vendors (manufacturers and programmers) with respect to the electronic contents of removable memory devices for voting systems in use in Wisconsin.

Finally, Mr. Washburn's materials include his allegation that the electronic voting systems in use in Wisconsin do not meet the minimum requirements of §5.91(10), Wis. Stats., and GAB §7.03(3), Wis. Stats. Mr. Washburn inquires whether the Board will consider decertification of many voting systems pursuant to GAB §7.03(1), Wis. Adm. Code.

Mr. Washburn's inquiry and identification of issues regarding review of approval for certain voting systems highlights the staff's ongoing concerns regarding the aging legacy voting systems in use in Wisconsin. To date, only one voting system has been approved for sale and

use in Wisconsin since January 1, 2009. That voting system has even been the subject of upgrades and review by the federal Election Assistance Commission. Nearly 80% of the total votes tabulated for any given election in Wisconsin are tabulated on optical scan equipment that is over 20 years old. For some of these legacy voting systems, manufacturers have stopped producing parts, such as memory devices, and for the past two years have warned that all support services for the legacy equipment may be coming to an end.

Recommendation:

The Board should direct staff to continue its review of the issues identified in Mr. Washburn's inquiry and return to the Board at a future meeting with a report and any recommendations.

Background Material Referenced By Mr. Washburn's Inquiry:

Board Policy on Electronic Record Retention:

DATE: June 9, 2010

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

FROM: Nathaniel E. Robinson
Elections Division Administrator
Government Accountability Board

SUBJECT: Revised Retention Policy—Electronic Election Data

I am writing to inform you about the Government Accountability Board's Revised Retention Policy—Electronic Election Data, pursuant to §§ 7.23 (1) (f) and (g), Wis. Stats. Following the enactment of 2009 Wisconsin Act 397, there are now statutory retention period distinctions between Federal and state/local elections, as well as based upon the date that voting systems were approved for use by the Government Accountability Board. Data from memory devices for non-tabulating, ballot marking equipment (i.e. AutoMARK) are excluded from the retention requirements of electronic election data under §7.23, Wis. Stats., regardless of the election type.

This revised retention policy for electronic election data is effective for any election occurring on or after June 2, 2010.

ALL ELECTIONS WITH FEDERAL OFFICE ON BALLOT

Election officials are required to retain all election materials for 22 months for any election where a federal office is on the ballot, pursuant to 42 U.S.C. §1974 and §7.23(1)(f), Wis. Stats. (The 22 months retention period applies to all election materials, unless §7.23, Wis. Stats., provides a longer retention period. See §7.23, Wis. Stats., and Destruction of Materials Chart for specifics.)

Electronic election data from tabulating equipment memory devices may be transferred to another recording medium 14 days after a primary and 21 days after any other election pursuant to §7.23(1)(g), Wis. Stats., but subject to the below. Additionally, no device may be cleared or erased while a recount or appeal of a recount determination is pending, nor during the time when an appeal or petition for review may be filed, except by order of a court in which an appeal is pending.

The following retention policy for electronic election data applies to all elections with a federal office on the ballot:

1. For those election officials using electronic/computerized vote recording or tabulation equipment utilizing memory devices such as a PROM or other similar memory storage devices, the "data" that should be transferred and maintained electronically for 22 months pursuant to §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. §1974, is the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, plus the hard copy output from each detachable recording unit or compartment (memory device or PROM), i.e. results tape.
2. As an alternate way to comply with §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. §1974, election officials using electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices (memory devices or PROMs) or other similar storage devices may retain the actual devices for the period of 22 months. In addition, retain the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election.
3. Any voting systems approved for use after January 1, 2009, as well as election officials using the Premier AccuVote OS and AccuVote TSX, the "data" that should be transferred and maintained electronically for 22 months pursuant to §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. § 1974, is the electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election and all election programming and materials from each device, which can be downloaded to hard drive or disk before erasure and reprogramming.
4. For those elections officials who possess elections management software the "data" that should be transferred and maintained electronically for 22 months pursuant to §§7.23(1)(f) and (g), Wis. Stats., and 42 U.S.C. §1974, is the following:
 - A) All election programming (programmable code,) and

- B) For each memory device programmed by election officials for voting systems approved for use prior to January 1, 2009, the accumulation of election results will be incorporated into the election management system in order to obtain and retain aggregate election results.

This programming and results data can be downloaded to hard drive or disk before erasure and reprogramming of the memory devices.

ELECTIONS ONLY OF STATE AND/OR LOCAL OFFICE OR REFERENDUM ON BALLOT

Election materials retention periods for state and/or local offices and referenda vary by type of material and are detailed in §7.23, Wis. Stats. (See also the Destruction of Materials Chart.) Those retention periods specified in §7.23, Wis. Stats., apply for the materials identified, regardless of the below policy. The policy below applies only to electronic election data from detachable recording units and compartments from tabulating equipment. No device may be cleared or erased while a recount or appeal of a recount determination is pending, nor during the time when an appeal or petition for review may be filed, except by order of a court in which an appeal is pending.

1. Tabulating equipment approved for use on or after January 1, 2009:

Election officials are required to retain electronic election data from detachable recording units and compartments from tabulating equipment approved for use on or after January 1, 2009 for 22 months. This data may be transferred to another recording medium for storage 14 days after a primary and 21 days after any other election pursuant to §7.23(1)(g), Wis. Stats., to meet this retention requirement. Following transfer of this data, the detachable recording units and compartments may be cleared or erased.

2. Tabulating equipment approved for use prior to January 1, 2009:

Election officials may clear or erase the electronic election data from detachable recording units and compartments for use with tabulating equipment approved for use prior to January 1, 2009, but only 14 days after any primary and 21 days after any other election. There is no requirement to transfer and there is no other retention period for this data.

Electronic Record Retention Statutory Provisions (Wisconsin):

7.23 Destruction of election materials.

(1) All materials and supplies associated with an election, except as provided in sub. (2), may be destroyed according to the following schedule:

- (a) Except as provided in par. (am), unused materials after an election and the contents of the blank ballot box after a primary may be destroyed at a time and in a manner designated by the appropriate clerk.

(am) Unused ballots may be discarded or destroyed no earlier than the day after the latest day for the filing of a petition for a recount under s. 9.01 for any office on the ballots.

(c) Registration forms of electors whose registrations are changed to ineligible status under s. 6.50 (7) may be destroyed 4 years after the change, unless an elector becomes eligible again during that period.

(d) Except as provided in s. 11.21 (11) (a), financial reports may be destroyed 6 years after the date of receipt. Financial registration statements may be destroyed 6 years after termination of registration.

(e) Poll lists created at a nonpartisan primary or election may be destroyed 2 years after the primary or election at which they were created and poll lists created at a partisan primary or election may be destroyed 4 years after the primary or election at which they were created.

(f) Except as authorized in par. (g), ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, may be destroyed after 22 months.

(g) Detachable recording units and compartments for use with tabulating equipment for an electronic voting system may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates. The requirement to transfer data does not apply to units or compartments for use with tabulating equipment for an electronic voting system that was approved for use prior to January 1, 2009, and that is not used in a federal election.

(h) Except as provided in par. (f), ballots may be destroyed 30 days after any election.

(i) Official canvasses may be destroyed 10 years after the election to which they relate.

(j) Election notices, and proofs of publication and correspondence filed in connection with such notices may be destroyed one year after the date of the election to which they relate.

(k) All other materials and supplies associated with an election may be destroyed 90 days after the election.

(2) If a recount is pending or if the time allowed for filing a recount petition at any election or an appeal or petition for review of any recount determination or decision at an election has not expired, no materials may be destroyed until after the recount is completed and the applicable time period has expired. In addition, if there is litigation pending with respect to a recount at an election, materials may be destroyed and recording units or compartments may be cleared or erased only by order of the court in which litigation is pending. Upon petition of the attorney general or a district attorney or U.S. attorney for the affected jurisdiction, a circuit judge for the affected jurisdiction may order that specified materials not be destroyed or that specified recorders, units or compartments not be cleared or erased as otherwise authorized under this subsection until the court so permits.

History: 1973 c. 334; 1975 c. 85, 200; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 260 ss. 42, 94; 1979 c. 311, 328; 1983 a. 484 ss. 60 to 63, 174; 1985 a. 304 ss. 82, 143; 1987 a. 391; 2003 a. 265; 2005 a. 451; 2009 a. 397.

Electronic Record Retention Statutory Provisions (U.S. Code):

42 U.S.C. §1974

The Civil Rights Act of 1960 includes 42 U.S.C. §1974, which requires in part:

“Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives . . . are voted for, all records and papers which come into his [or her] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election . . . Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000.00 or imprisoned for not more than one year, or both.”

Statutory Provisions for Approval of Voting Systems (Wisconsin):

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board. The board may revoke its approval of any ballot, device, equipment or materials at any time for cause. No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

- (1) It enables an elector to vote in secrecy and to select the party or the independent candidates for whom an elector will vote in secrecy at a partisan primary election.
- (2) Except at a primary election, it enables an elector to vote a straight party ticket, but the automatic tabulating equipment counts the vote of an elector who casts a vote for a candidate for an office outside the straight party ticket for that office only.
- (3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.
- (4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
- (5) It accommodates all referenda to be submitted to the electors in the form provided by law.
- (6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party or the independent candidates of his or her

choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party or independent candidate designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.

(7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.

(9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

(14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

(15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

(18) If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

History: 1979 c. 311; 1983 a. 484; 1985 a. 304; 2001 a. 16; 2003 a. 265; 2005 a. 92.

Cross-reference: See also ch. GAB 7, Wis. adm. code.

Administrative Code Provisions:

GAB 7.03 Continuing approval of electronic voting system.

(1) The board may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the board's approval for the use of the voting system, the vendor shall inform the board of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the board, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.

(3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. 7.23, Stats.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the board.

(5) For good cause shown, the board may exempt any electronic voting system from strict compliance with ch. GAB 7.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00.

N128W12795 Highland Road
Germantown, WI 53022
April 15, 2011

Government Accountability Board
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984

Dear Sirs:

Please include this document and those attached to this email in the meeting materials for the regularly scheduled GAB meeting of May 17, 2011. I would like the GAB to take up the matter of the destruction of election records in violation of both State law [WI Stats. 7.23(1)(g)] and Federal law [Title 42 §1974].

The election records under discussion are discussion are the electronic contents of the removable memory cards used in the following voting devices:

- AccuVote TSX
 - AccuVote-ES 2000
 - AccuVote-OS 1.96.6
 - AutoMARK
 - DS200
 - iVotronic
 - M100
 - M150 Central Count
 - OpTech 2
 - OpTech Eagle (tally at CC office)
 - OpTech Eagle 3P
 - Sequoia AVC Advantage
 - Sequoia AVC Edge II
 - Sequoia AVC Edge II 5.0.2.4
 - Sequoia Optech Insight
- (Source: Voting Equipment by Municipality)

The problems with the current GAB "policy" regarding the destruction of these election records is it violates

1. The Wisconsin open records law [WI Stats §19.31-39],
2. The Wisconsin election record retention laws [WI Stats. 7.23(1)(g)], and
3. The Federal election record retention law [Title 42 §1974].

The violations of these laws can be summarized by four broad rationalizations:

1. The electronic contents of the removable memory cards are not election records
2. The electronic contents of the removable memory cards are trade secreted property of the various election vendors.
3. The election administrators do not retain custody of these election records.
4. The law does not require these election records to be retained

Violations of Wisconsin open records law.

While enforcement of the open records law regarding election records is outside of the strict jurisdiction of the GAB. But both the clerks and the vendors cite the GAB as the authority upon which they rely in denying open records request for the contents of the memory. The extent the clerks and vendors rely on the authority of the GAB staff to deny open records requests, the violation of Wisconsin's open records law is a matter for the GAB.

John Washburn
Request for Agenda Item for May 17, 2011 GAB meeting.

Three set of open records requests have submitted to various municipal clerks. The dates of the emails for these open records requests were: March 1, 2011, March 15, 2011, and April 7, 2011. The open records request ask for election records from the February 15, 2011 primary, the federal fall elections of 2010, and the April 5, 2011 election; respectively.

The forms of the denial presented by various clerks and vendors which are contrary to Wisconsin open records law have been:

1. To not respond to the open records request; e.g. City of Milwaukee Election Commission for the 3 open records requests for February 15, 2011 election records contained in the March 1, 2011 email to the commission.
2. To provide copies of paper tapes in lieu of the records asked for; e.g. City of Madison regarding the request A of the contents of the Optech memory cards used for February 15, 2011 elections.
3. To ignore the request for contents of the AutoMARK cards because the AutoMARK cards do not contain a candidate totals, even though the cards contain other data "requisite to voting" and "essential for proper operation of" the AutoMARKs. E.g. City of Madison.
4. To charge excessive, profit-making fees for access to the requested election records. E.g. River Hills for April 5, 2011 election records
5. To claim that because public portions of the electronic data contained on the memory cards is comingled and inseparable from possibly proprietary data, that, therefore the whole of the comingled data is exempt from disclosure. E.g. the City of Algoma in Kewauke County and City of Wausau.

Violations of Federal Election Record Retention Law.

The requirement to retain the contents of the removable memory cards is laid out in federal law in Title 42 §1974 which reads:

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Or with helpful ellipsis reads:

Every officer of election shall retain and preserve, for a period of twenty-two months [...] all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting [...]. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

The key points of this statute are:

1. Election officials are to retain election records. The GAB policy of Option C of the December 17, 2008 memorandum which can be paraphrased as "Let the vendors do it" is contrary to this federal mandate.
2. Election records do not need to be created under the federal statute, but if state statutes do mandate a record be created then the federal statute requires that record to be preserved.
3. Every records "requisite to voting" is required to be retained.

These three principals are re-iterated by the department of justice article by Craig Donsanto from 1994 (Appendix 2 of the FEC/EAC document: Innovations in Election Administration 8) which states that since not all states have a state statute as stringent as Wisconsin's WI 7.23(1)(g) other states can get by with saving less than the full contents of the removable memory cards used in voting machinery. Mr. Donsanto's analysis though is flawed because he assumes there are no specialized voting programs present on a removable

John Washburn

Request for Agenda Item for May 17, 2011 GAB meeting.

memory card. By Mr. Donsanto's own analysis, \such programs must be retained. From page 18 is item 18 of records which Donsanto states are required to be kept pursuant to Title 42 §1974:

Records, whether in hard copy format or stored on electronic media, pertaining to the specialization or particularization of vote counting software;

The removable memory cards for all of the vendors (with the exception of Populex) have on the memory cards a compiled EXE or interpreted code which is the particularization of vote counting software particularized to detect and tally votes specific a single combination of election/jurisdiction/ballot style. These are the commingled programs referred to by Command Central, Dominion, and ES&S as exempt for disclosure because the programming on the removable memory cards memory cannot be separated back into its exempt, trade secreted and public components.

For the ES&S M100, M150, DS 200, and iVotronics the Unity Hardware program managers complies a stand-alone executable program which counts and tallies votes. For the Sequoia products (Insights, AVC Edge, AVC Advantage) the WinEDS program managers complies a similar stand-alone executable program which counts and tallies votes. For the Diebold/premier/dominion products (AccuVote OS, AccuVote TSx, ES-2000) the active programming is in the form of an interpreted script. For the Optech Eagles both WinEDS and UNITY can compile the executable program placed on the removable memory card.

This vote counting programming must by federal law be preserved for 22 months. The software to read and write to the memory cards must also be retained. The reason is simple. It is to this out of sight and un-review software that municipal clerks have delegated the voter intent questions codified in WI Stats 7.50.

Since HAVA requires a disability device, the memory cards used by an AutoMARK are "requisite to voting" because without the memory card the AutoMARK will not work. As Donsanto makes clear, **ALL** records (such as the contents of the AutoMARK memory cards and those containing vote counting software) "requisite to voting" must be retained regardless of whether those records contain vote totals or not.

Even though this document is old and contains several technical errors, the message from the Election Crime unit of the Department of Justice is clear: *"The contents of the removable memory cards must be retained."*

Violations of Wisconsin Election Record Retention Law.

On the matter of federal elections the Wisconsin election record retention law is very clear that the contents of the memory cards must be backed up for all federal election regardless of the certification date of the machinery. The law is also clear that the contents of the memory cards must be kept in situ for 14 or 21 days for non-federal elections. The contents of the AutoMARK cards for the City of Appleton for the February 15, 2011 election were overwritten on February 24, 2011. This is well in advance of the 14 day minimum retention period after the February 15, 2011 (i.e. March 1, 2011).

The retention policies as understood by the various vendors, county clerks, and municipal clerks are at serious variance with Wisconsin's open records law, Wisconsin's election record retention law, and the federal election records

I ask the GAB to do its duty under WI Stats. 5.08 and enforce Wisconsin election law. Demand the clerks and vendors backup the contents of the removable memory cards as both state and federal require and clarify with both the vendors and the clerks that election records (including the contents of the removable memory cards) are subject to WI Stats. 19 and are open records.

Various documents of the SEB and GAB regarding the preservation of the contents of removable memory cards.

- DESTRUCTION OF ELECTION MATERIALS - s.7.23, Stats
- Chapter 7 Election Officials; Boards; Selection And Duties; Canvassing
- Chapter Elbd 7approval Of Electronic Voting Equipment (Register, June, 2000, No. 534)
- Other Election Materials Destruction Of Election Materials (June 2007)
- GAB Meeting Amended Agenda Tuesday, November 11, 2008
- GAB Meeting Agenda Monday, October 5, 2009
- GAB Meeting Agenda Tuesday, May 5, 2009
- SEB Memorandum George A. Dunst July 18, 2007 Administrative Rule Regarding Conversion Of Elections Records From Hard-Copy To Electronic Format Or Microfiche
- SEB Memorandum George A. Dunst January 28, 2008 Consolidation of the Rules of the Former Elections and Ethics Boards
- VOTING Proper use and security of voting equipment (July 2007)
- GAB Meeting Agenda Monday, May 5, 2008
- GAB Meeting Agenda October 6, 2008
- GAB Meeting Agenda Monday, November 9, 2009
- chapter 5 elections general provisions; ballots and voting systems (2005-06)
- GAB Meeting Agenda Tuesday, November 11, 2008
- GAB Meeting Agenda Wednesday, December 17, 2008
- Chapter 6 The Electors (2007-08)

Washburn, John

From: John Washburn [jww-ei@washburnresearch.org]
Sent: Friday, March 25, 2011 7:47 AM
To: 'Dreps, Robert'
Subject: FW: Open Records Request
Attachments: WAUSAU, C-FEBRUARY 2011.PCC; WAUSAU C ADRC 1-SEPTEMBER 2010.PCC; WAUSAU, C-ADRC 1-NOVEMBER 2010.PCC

Dear Bob:

There are problems with this response.

- 1) The PCC file is not all that is on an M100 PCMCIA card. This is just candidate vote totals. There is also at a minimum an EXE complied specific to this election for this jurisdiction.
 - a. So where is the redaction/exemption log explaining what is on February 15, 2011 card describing the separation of what is exempt and what is public
- 2) Also on the day I made my request Election Law 7.23(1)(b) required the AutoMARK card be undisturbed. I cannot tell from this response if the card used by the AutoMARK in the February 15, 2011 election existed or not. "GAB does not require back-up". I infer from the rest of the paragraph that the answer is: "No, the AutoMark card was overwritten, prior to March 1, 2011", but I want a more definitive response to these questions.

I would like your guidance on how to respond to these two issues.

This is how I know there is more on the cards which is being withheld

Here is a nice overview of the M100 / Automark system used in Marathon county.

<http://freedom-to-tinker.com/blog/dwallach/california-review-esamps-automark-and-m100>

The money quotes are:

You can swap out the PCMCIA memory cards in the precinct-based ballot tabulator (model M100), while in the precinct. This attack would be unlikely to be detected. (Red team analysis)

The M100 ballot counter is designed to load and dynamically execute binary files that are stored on the PCMCIA card containing the election definition (A.12) in cleartext without effective integrity protection (A.1). (source code analysis)

Detailed reports from California for the links made dead in the article above are:

("red team" analysis) <http://www.sos.ca.gov/voting-systems/vendors/ess/unity-3011-red-team.pdf>

(Source code analysis) <http://www.sos.ca.gov/voting-systems/vendors/ess/unity-3011-source-code.pdf>

From: Nan Kottke [mailto:Nan.Kottke@co.marathon.wi.us]

Sent: Thursday, March 24, 2011 12:21 PM

To: jww-ei@washburnresearch.org

Cc: Scott Corbett; Anne Jacobson

Subject: RE: Open Records Request

Mr. Washburn:

Attached are the electronic back-up files made from the removable memory cards for the City of Wausau, Ward 1 for the following election:

February 15, 2011; September 14, 2010 and November 2, 2010.

With respect to the AutoMARK files, GAB does not require back-up, however, we are still trying to determine if electronic files can be made with contains ballot information form February 15, 2011.

I will respond further by April 8, 2011.

Nan Kottke
Marathon County Clerk

Toni Rayala
Wausau City Clerk

=====

Statement of Confidentiality

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COUNTY

COURTHOUSE - 500 FOREST STREET - ROOM **OF**
B134

OFFICE OF CORPORATION COUNSEL

(715)261-

1140 FAX (715)

261-1133

MARATHON

WAUSAU, WISCONSIN 54403-5568

COUNTY ATTORNEYS

SCOTT M. CORBETT

CORPORATION COUNSEL

DIANE L. MEULEMANS

DEPUTY CORPORATION COUNSEL

SHELLEY L. WELLS

ASSISTANT CORPORATION COUNSEL

March 16, 2011

John Washburn N128W12795
Highland Road Germantown,
WI 53022

RE: Public Records Request

Mr. Washburn:

This letter follows an e-mail you received from the Marathon County Clerk, Nan Kottke, on March 4, 2011. That e-mail indicated that Marathon County's response would be provided by March 18, 2011.

Your request for records pertaining to the February 15, 2011, primary election has been referred to my office for a response. You have made the following requests pursuant to the Wisconsin Public Records Law.

Question #1:

I request a copy of the contents of the removable memory card used by the optical/infrared scanner used within Ward 1 of your municipality during the primary election held on February 15, 2011.

Response:

The Marathon County Clerk, Nan Kottke, is the records custodian for the electronic voting program implemented for Ward 1 in the City of Wausau, Wisconsin. Marathon County uses electronic memory cards for the M-100 Precinct Counter known as "PCMCIA" cards.

In addition to the specific requests contained herein, your letter to the county clerk contained this additional statement:

"Since the requested election records are electronic records, I expect the copies of backups provided to me pursuant to these open records requests to also be in electronic form and to be true and faithfully copies of the contents of the removable memory card covered by the above requests."

A. Trade Secrets.

Sec. 134.90(2), Wis. Stats., prevents the misappropriation of trade secrets as that term is defined in Sec. 134.90(1)(c), Wis. Stats. Marathon County's vendor, Election Systems and Software, Inc., has identified proprietary information contained in the actual memory cards and objects to their release as public records. Marathon County is therefore unable to provide an electronic copy of the actual memory card.

B. Copies of Contents.

Although the removable memory cards contain proprietary information, contents of the memory cards relating to tallying of ballots can be provided in written form. See, WIREDATA II, 2008 WI 69 596, 310 Wis.2d 397 as follows:

Enclosed herewith are the following:

Exhibit 1. A certified copy of the election night status report tape generated from the removable memory card on the evening of the election showing the vote tabulation contents of the removable memory card.

Exhibit 2 is a certified copy of a computer screen showing that the removable memory card for Ward 1 was backed up as required by law.

Exhibit 3 is a certified copy of a computer screen showing the contents of the backup file for Ward 1 in a format that does not disclose the vendor's proprietary information.

Exhibit 4 is a certified tape run from the memory card using the backup file pursuant to your request for public record.

Question #2:

I request a copy of the contents of the removable memory card used by the optical/infrared scanner used to process/tally absent ballots during the primary election held on February 15, 2011, but limited to the removal memory card of that machine which processed one or more absentee ballots cast by electors of Ward 1 of your municipality.

John Washburn
Page Three
March 16, 2011

Response:

All absentee ballots are scanned at the polling place on the day of the election. Absentee ballots are delivered to the appropriate polling place by the municipal clerk on election day. They are opened and scanned as time permits. No separate removable memory card exists for absentee ballots.

Question #3:

I request a copy of the contents of the removable memory card used disability [sic] device which was located in the polling location containing Ward 1 of your municipality primary election held on February 15, 2011.

Response:

I interpret this request to relate to memory cards used for the purpose of assisting persons with disabilities in marking ballots. Marathon County employs a system known as the "Auto Mark Card" provided through Election System and Software, Inc. This system is strictly a marking device for paper ballots. The paper ballots are then scanned with all other ballots at the polling place. No votes are tabulated through the use of the Auto Mark memory card. Please see response to Question #1 regarding release of actual electronic copies of the memory card containing proprietary information identified by the vendor.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott M. Corbett', with a stylized flourish at the end.

Scott M. Corbett
Corporation Counsel

SMC

cc: Nan Kottke, Marathon County Clerk
Tony Rayala, City of Wausau Clerk

Washburn, John

From: John Washburn [jww-ei@washburnresearch.org]
Sent: Monday, March 21, 2011 6:01 AM
To: 'toni.rayala@ci.wausau.wi.us'
Cc: 'nan.kottke@co.marathon.wi.us'; 'corpcounsel@mail.co.marathon.wi.us'; 'Dreps, Robert'
Subject: FW: 2011-03-01 OR Request / Preservation of Requested Records
Attachments: 03-17-2011 09.pdf;41.pdf;00PM.pdf; Marathon County - Wausau.zip

Dear Clerks Rayala and Kottke:

It occurs to me that there is a second problem with the assertion of trade secret exemption claimed for Open Record Request A. While I object strenuously to the notion that election records can be owned by any person other than a Wisconsin election official or that election records can be a secret let alone a trade secret, for the purpose of this correspondence I will assume there is some legitimacy in the claimed open records exemption based on trade secrets under WI Stats. 19.36(5).

The blanket denial attached seems to indicate that ES&S is claiming that **ALL** the data on the PCMCIA card is trade secreted and therefore **none** of the data on the card is public.

The first question then which must be answered is:

Is the whole of the contents of the PCMCIA card a trade secret?

The answer here is clearly NO and the evidence of this is among the copy of the poll tape and other material provided to me in lieu of the records I requested; a copy of the PCMCIA card. These other documents assert that some of the data on the PCMCIA card are the candidate vote totals for each of the candidate appearing on the February 15, 2011 primary ballot as the ballot appeared in Ward 1 of the City of Wausau. Thus, the data on the PCMCIA card is a mixture of public and exempt information.

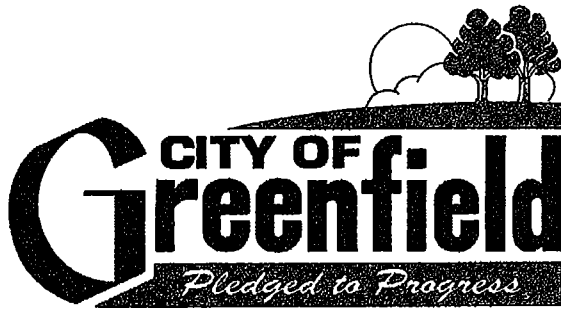
This common situation was anticipated by the Wisconsin Legislature and is covered under WI Stats. 19.36(6) which reads:

If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release.

The question then becomes how shall Marathon county and/or the City of Wausau effect this required separation?

Again, the Legislature has foreseen this possibility as well. All of the property that is the ES&S electronic voting system is held in escrow by the State of Wisconsin per WI Stats. 5.905 and may be requested by either a County Clerk or a Municipal clerk under WI Stats. 5.905(5). Once the GAB has granted access to the trade secreted software components escrowed by ES&S with the State, personnel from either the County or City can compare what is on the PCMCIA card with the software components held in escrow. Material on the PCMCIA, but not also in escrow would then be the non-trade secreted material on the card. The material in escrow is the trade secreted software components found on the card regardless of the particular election or the particular jurisdiction or the particular ballot configuration. Data found on the PCMCIA card which is specific to a particular election, or specific to particular jurisdiction, or specific to a particular ballot is public information and must be separated from the trade secreted material so as to be released under open records request A. The escrowed software components provide a clear, bright line test for what data on the PCMCIA card are electronic voting system software component(s) protected by trade secrets and what data on the PCMCIA card is public, election data.

In Liberty,
John Washburn



April 14, 2011

VIA EMAIL & U.S. MAIL

John Washburn
N128W12795 Highland Road
Germantown, WI 53022

Dear Mr. Washburn:

I am writing in response to your open records request dated April 7, 2011 requesting the entire contents of the removable memory card from Ward 7 for the April 5, 2011 election.

I am not able to provide you with the entire contents of the removable memory pack from Ward 7 for the April 5, 2011 election, nor can the vendor, within the ten days permitted by your request as explained herein. I received notification on April 8, 2011 by the Wisconsin Government Accountability Board that a Statewide recount for the Supreme Court Race is a possibility. According to the Wisconsin Government Accountability Board's Revised Retention Policy for Electronic Election Data, electronic election data may not be cleared until 21 days after an election. Additionally, no device may be cleared or erased while a recount or appeal of a recount determination is pending, nor during the time when an appeal or petition for review may be filed, except by order or a court in which an appeal is pending. Thus, the electronic election data for the April 5, 2011 election is stored securely in its original format in the Clerk's office and will not be returned to the vendor until the period for a recount has expired. I do not have the capability of providing you with a copy of the removable memory pack contents that you request. Upon the expiration of the availability of a recount and my turning over of the memory pack to our vendor, I will ask that they reproduce a copy pursuant to your request.

In the meantime, enclosed please find paper copies of the election results from Ward 7 for the April 5, 2011 election, which also complies with your request. There are 4 copies enclosed for a fee of \$0.25 per page, for a total cost of \$1.00. Please make your check payable and submit your payment to the Greenfield City Clerk's Office, 7325 W. Forest Home Ave., Room 102, Greenfield, WI 53220.

Sincerely,


Jennifer Goergen
City Clerk

cc: Roger Pyzyk, City Attorney
Shane Falk, Wisconsin Government Accountability Board Staff Counsel
Larry Zins, Command Central Vice President

Washburn, John

From: Roxann Halverson [roxann.halverson@buffalocounty.com]
Sent: Friday, April 01, 2011 4:12 PM
To: jww-ei@WashburnResearch.org
Subject: FW: Command Central - election media return

Mr. Washburn,

This is the email I received from Command Central regarding your request. I do have the paper records if you would like those.

Roxann Halverson
Buffalo County Clerk
407 S. 2nd St.
P.O. Box 58
Alma, WI 54610
608-685-6206

Command Central customers:

This email contains the response that we are sending to municipalities that are asking us for "the entire contents of the removable memory card" for the September and November, 2010 elections. Please share with your municipalities.

The specific content requested is not available because we have reprogrammed the media devices in question (results cartridges and memory packs) first with the February 15, 2011 election and then with the April 5, 2011 election. That is the short answer to your request. I will add that Command Central, as part of the Hardware Maintenance Agreement which we have with your municipality, **does retain the "programming code" that was used in all Federal elections for the past 22 months.** That puts the municipality in full compliance with the data retention statutes according to the GAB.

Command Central submits that we are in full compliance with Wisconsin (data retention) statute 7.23 which provides:

7.23(1)(g) <http://www.legis.state.wi.us/statutes/Stat0007.pdf>

(g) Detachable recording units and compartments for use with tabulating equipment for an electronic voting system may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates. The requirement to transfer data does not apply to units or compartments for use with tabulating equipment for an electronic voting system that was approved for use prior to January 1, 2009, and that is not used in a federal election.

We have been told by the Wisconsin Governmental Accountability Board (GAB.) that the above statute applies to this situation. It is more than 21 days after the elections and your electronic voting machines were approved prior to January 1 2009.

Thank you,

Larry

Larry Zins
Vice President

Command Central, LLC
P.O. Box 7306
St. Cloud, MN 56302-7306
320/259-7027 - phone
320/259-7028 - fax
larry.zins@ccelections.com

Washburn, John

From: Mary Robbins [Mary.Robbins@co.waupaca.wi.us]
Sent: Monday, March 21, 2011 3:18 PM
To: jww-ei@washburnresearch.org
Cc: Jeff Siewert
Subject: FW: Command Central - open records requests

Dear Mr. Washburn,

We contract with Command Central to program and store our election data. Please see the attached e-mail from Command Central. I am told it is not available for the City of New London. I would be happy to share any other election materials that are stored in our office.

Mary A. Robbins
County Clerk/Administrative Coordinator
811 Harding St.
Waupaca, WI 54981
715-258-6200 Fax: 715-258-6212

From: Lee Storbeck [mailto:lee.storbeck@ccelections.com]
Sent: Tuesday, March 15, 2011 1:30 PM
To: 'Ann Mihalko'; 'Mary Bartelt'; 'Cindy Campbell'; 'Cindy Phillippi'; 'DeeAnn Cook'; 'Denise Wetzel'; 'Gregory Klusendorf'; 'Hickey, Sara A.'; 'Jamie Feuerhelm'; 'Janet Geisler'; 'Jean Gottwald'; 'Jennifer Hudon'; 'Jerri Meyer'; 'Kathy Brandt'; 'Kathy Jacob'; 'Kathy Kobylski'; 'Kris Mayberry'; 'Kyle Deno'; 'Linda Bawden'; 'Lu Ann Hecht'; 'Lynn'; 'Marcia Bauer'; 'Margaret Bostelmann'; 'Marilyn Hoyt'; 'Mary Robbins'; 'Michael Saari'; 'Paul Syverson'; 'Ron Hoff'; 'RoxAnn Halverson'; 'Shane Blaser'; 'Victor Vlasak'; 'Wanda Hinrichs'; 'Linda Gebhard'; 'Shelley Bohl'; 'Donna Seddon'; 'Carole Wondra'; 'Julie Glancey'; 'Janet Loomis'; 'Lisa Freiberg'; 'Kathy Nickolaus'; 'Wendy Christensen'; 'Lisa Weiner'; 'Suzette Emmer';
lbawden@lafayettecountywi.org; Lisa Merrell; Melanie Stake
Cc: 'Larry Zins'; aaron.storbeck@ccelections.com; sue.wahl@ccelections.com; dennis.bengtson@ccelections.com; larry.swift@ccelections.com
Subject: Command Central - open records requests

We are aware that a recent email from a person named John Washburn has been sent to many Wisconsin municipalities and County Clerks. In this request, citing "open records" statutes, he asks for "the entire contents of the removable memory cards", (including results cartridges and memory packs), for the September and November, 2010 elections. **He insinuates that he is entitled to this information by law, but in our opinion, he is not.**

There are two issues that make this request outside of the normal parameters of "open records" requests.

The first issue is that the request must be made during a time period prescribed by Wisconsin statute, which may not be the case here. In fact, most of the memory devices affected here have already been reprogrammed for the April 5, 2011 election. Your Governmental Accountability Board should be getting something out on that issue shortly.

The second issue is that the vendor that manufactured the affected voting machines has very strict policies governing the transfer of proprietary information to outside parties regardless of an "open records" request. This definitely includes the programming information resident on those memory devices. Dominion Voting Systems, the company that acquired Sequoia Voting Systems will provide Command Central with an updated legal position on this, which we, in turn, will provide to you, the County Clerks.

In the interest of expediency, we are asking that you inform your municipalities of our position on this matter. In general, it's always a good idea to verify that someone is actually entitled to something before granting an "open records" request. As always, we very much appreciate your understanding that it is next to impossible for Command Central to contact almost a thousand individual municipalities on short notice. You may call me or Larry Zins, or Aaron Storbeck if you have any questions on this matter.

Thanks,
Lee

Lee Storbeck
President
Command Central, LLC
POB 7306
St Cloud MN 56302-7306
320/259-7027 - phone
320/259-7028 - fax
lee.storbeck@ccelections.com

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April 1, 2011

Mr. Lee Storbeck
Command Central

re: Wisconsin Records Request

Mr. Storbeck:

Thank you for your correspondence regarding a public records request in the State of Wisconsin related to the Edge II, Optech Eagle and Insight memory card devices. Dominion Voting Systems welcomes transparency in the voting process and does not object to the disclosure of the raw data contained within the electronic files on any of the aforementioned memory devices. The information contained on the memory devices may either be downloaded onto electronic media or printed in hard copy. Counties and Municipalities should contact their Counsel with respect to any questions regarding compliance with the Records Request.

Note that Dominion Voting Systems does not relinquish any copyright, patent, or trademark asserted over this or any other material in any release arising from any public records request. Dominion Voting Systems neither relinquishes nor waives any remedy, at tort or at equity for any reverse engineering, patent mining, or other use of the released information if such use infringes Dominion Voting Systems intellectual property.

If you have any questions regarding the information above, please call me at your convenience.

Sincerely:



Edwin B. Smith, III
Vice President, Compliance and Certification

cc: Waldeep Singh, Vice President of Customer Relationship Management

Innovations in Election Administration 8

**Election
Document
Retention
in an Age
of High
Technology**



Election Document Retention in an Age of High Technology

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Introduction by the Clearinghouse

This report is another in the series on *Innovations in Election Administration* being published by the FEC's National Clearinghouse on Election Administration.

The purpose of this series is to acquaint State and local election officials with innovative election procedures and technologies that have been successfully implemented by their colleagues around the country.

Our reports on these innovations do not necessarily constitute an endorsement by the Federal Election Commission either of any specific procedures described or of any vendors or suppliers that might be listed within the report. Moreover, the views and opinions expressed in these reports are those of the authors and are not necessarily shared by the Federal Election Commission or any division thereof.

We welcome your comments on these reports as well as any suggestions you may have for additional topics. You may mail these to us at:

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or else contact us

Toll free 800/424-9530
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By FAX on 202/219-8500.

Election Document Retention in an Age of High Technology

Definitions

Acknowledgment notice—Notice sent to a voter registration applicant to inform him of the disposition of his application.

Ballot image—Record of all the votes cast by a single voter. Also called "ballot set."

Canvass sheet—Record of the aggregation of the vote from a number of precincts to obtain totals for various constituencies or entire jurisdiction.

Confirmation mailing—Outgoing mailing from election office to registrants who may have changed their address, and which includes a postage pre-paid and pre-addressed return card by which the registrant may verify or correct the address, or confirm that he or she has moved outside of the jurisdiction.

DRE—Direct recording electronic voting machine.

Election database—Electronically created documentation which defines parameters of the election, contests, candidates, ballot styles, etc.

Electronic medium—Magnetic tape, magnetic or optical disk, removable data storage device, etc.

List of voters—List of those eligible to vote in a precinct. May be a computer-generated or other printed list, or a binder of original affidavits. Those who vote are checked off or marked in some other way. Also called "checklist," "roster," "precinct roster," "master index," "incoming voting list," "list of voters book," "roster index," "polling

place roster," "precinct register," "election register," "printout," etc.

Listing of those who voted—Made by pollworkers. Also called "poll book," "signature poll book," "voters poll list," etc.

Machine-read ballot—Individual document ballot marked by the voter and counted by computer. Includes punchcard and mark sense ballots.

Original voter registration form—Document filled out by or for the voter at time of applying for voter registration; usually signed by voter.

Paper ballot—Individual document ballot that is manually marked by the voter and manually counted by election officials.

Pollwatcher—One who observes the conduct of the election in the polling place as a representative of an entity other than the election authority. Usually must have credentials issued by a political party, a candidate or the election office. Also called "watcher" or "challenger."

Pollworkers—Official staff who conduct the election in the polling places. Does not include campaign workers, watchers, challengers, etc., who represent entities other than the election authority. Also called "inspectors," "officers of election," "judges of election," "election judges," "precinct board," "clerks," "commissioners," etc.

Precinct tabulator—An electronic device on which votes are recorded and results reported in the polling place. Includes Precinct Ballot Counter (PBC); optical scanner; and Direct Recording Electronic (DRE) voting machine.

Provisional ballot—Used by a person whose qualification for voting is uncertain and must be confirmed in the central office before his ballot can be included in the vote count. Also called "special ballot" or "affidavit ballot."

Removable data storage device—Read-only memory device which is programmed to record votes as they are cast on an electronic machine. The device is inserted into the machine before the polls open and removed after the polls close. It is computer-read along with other devices to obtain jurisdiction vote totals. Also called "memory pack," "memory cartridge," "EPROM," "PROM," "detachable recording compartment or unit."

Tally sheet—A record of the manual tallying of ballots for a limited jurisdiction, usually a precinct.

Test deck—A pre-audited group of ballots voted with a pre-determined number of valid votes; used to test the correctness of electronic vote-counting software. Also called "certification deck."

Verification mailing—Outgoing mailing from election office to applicant for voter registration to confirm the applicant's eligibility before his name is added to the voter registry.

Voter registry—File of all voters in the jurisdiction, kept current by the election office.

Election Document Retention in an Age of High Technology

What election documentation should be saved, why should it be saved, and for how long? That's one of the most vexing questions facing election officials. This report seeks to provide guidance to them in formulating an answer to it.

We define documentation broadly. It includes not only such historically obvious items as ballots and voter lists but also the output of the computer, which has become an essential part of election administration and which produces a much fuller record of election activity than was available when records were produced by pencil, pen, or typewriter.

The old documentation was almost always on paper, the one obvious exception being the mechanical lever machine itself, the counters of which record the vote cast on that machine.

The new kinds of documentation may also be on paper, output of the computer printer, or may be punchcards which input data into the computer. Or they may be stored on an electronic medium—magnetic tape, magnetic or optical disk, PROM or EPROM. These electronically based documents are as much a part of the record of an election as are paper documents, and no analysis of what should be saved would be meaningful and complete without including the new documentation.

New technology has made it possible to achieve enormous savings in storage facilities and improvements in retrieval capabilities by

transferring data from original paper documents to an electronic medium. Digitized images, sometimes including signatures, are stored on optical disk and utilized to produce facsimiles as needed. Microfilm and microfiche have made it possible to store documents as tiny photocopied images of the original and later to project or print them at full size for reference.

Thus technological miracles have enabled the election administration profession to make quantum-leap progress in efficiency, and to discard tons of paper that formerly filled a large portion of their offices. But new questions have arisen about uses of these substitute documents. The U. S. Department of Justice does not, in many instances, consider copies of original documents, however produced, to be adequate for their purposes of law enforcement.

So what and how much to save, in what format and on what medium, remains a difficult question. If all records received or created by an election office were permanently retained, it would be possible to answer any question raised about the agency's work and to cite a reference to support that answer. As a practical matter, however, such a policy would be impossible to implement. First, to retain and store all records produced, and to catalog them for identification and retrieval, would require resources much beyond those available to local and State government offices. Second, voting devices must be periodically cleared for use in

subsequent elections. Finally, not everything is necessary or even desirable for retention. Election agencies produce mountains of documents. Many are repetitive or redundant, and some have no value once they have met the instant need for which they were created.

Kinds of Documentation

In the following listing, documentation produced in election administration is grouped under headings, each of which relates to an aspect of election activity. The term "record" is used interchangeably with "document" or "documentation." Documentation can be either hard copy or on electronic medium. ***Any and all election records should be dated; some should bear the time as well as the date.***

The list of kinds of documentation is lengthy, but even so it does not reflect the total dimension of election records. Excluded from this study are records for which retention requirements ordinarily are specified in State law, and records of a general management nature which are not unique to election administration. Among such documentation is that relating to

- Candidacy.
- Petitions and petition verification.
- Campaign finance; financial disclosure.
- Voting accessibility for elderly and handicapped persons; the biennial reporting requirements under this Act ended with the 1992 election.
- Publications and notices.
- Archives and reference materials.
- Budget; procurement; personnel; inventory; correspondence.
- Legislation; litigation; attorney general opinions.

Voter Registration

Voter registration documentation—of which there is a great deal—details who applied for voter registration, who was accepted or rejected, who qualifies for voting, and activity undertaken to keep the registry current and accurate.

- The **original voter registration form** filled out by or for the voter at the time of registration. This is the primary evidence of registration. Besides data to establish identity, residence, etc., it usually contains an oath of the applicant and the signature, the latter used to establish authenticity of a signature submitted subsequently and purported to be that of the same voter, as in check-in at the polls, in absentee voting, or on a petition. Election authorities in some States now digitize the original signature and store the image in a computer database so that a facsimile signature is available for reference on a screen for use in petition verification, or is printed on a voter list for election day check-in, thus making it unnecessary to transport to the polls the bulky binders containing the original records. The same imaging technology also can be used to create a facsimile of the entire voter registration form which can be stored on and accessed from electronic medium; original documents then can be archived and rarely if ever referenced. In at least one State, the voter registration record is microfilmed, after which the original record is destroyed.

- **Records of sending acknowledgment notices** to applicants for voter registration, as required by the National Voter Registration Act (NVRA). The notice informs the applicant of the disposition of the application.
- **Rejected applications for voter registration** and documentation associated therewith reflect judgments made by the election agency that the applicant does not qualify for voting in the jurisdiction, with the reasons specified.
- **Records of declination to register** will be generated under NRVA at public assistance agencies. Such records confirm that it was the citizen's own choice not to apply for voter registration. Failure to sign the application also constitutes a declination.
- The **voter registry** is the file of all voters in the jurisdiction, maintained and kept current in the election office. From a computerized voter registry many different voter listings can be produced.
- **Many documents associated with maintenance of the registry.** It is impossible to list all the documents used in registration file maintenance, because of the varying traditions and practices that have evolved in the States and have been incorporated into their statutes. The following listing is general, and each State can place its own particular documents in the broad categories. Records relating to file maintenance both authorize the actions taken to keep the voter registry accurate and current, and demonstrate that such activities do not compromise fairness and equity. The latter purpose has taken on greater significance with the enactment of the National Voter Registration Act of 1993 (NVRA), which will be effective starting January 1 1995.
 - Authorizations and/or requests for changes of address, name, party. Some change of address information may come from State drivers license authorities or from the U. S. Postal Service; the information may be on paper or electronic medium.
 - Authorizations to cancel (remove the voter from the registry), because of death, moving out of the jurisdiction, criminal offense, declaration of mental incompetence, request of the voter, etc. Reason for removal should be part of the record.
 - Records generated in mail verification or confirmation of voter status, including but not limited to lists of names and addresses of those to whom confirmation mailings were sent and whether or not each responded.
 - Notices returned to the election office by those responding to confirmation mailing.
- **Statistical and other information** necessary for the Federal Election Commission (FEC) to make the biennial report to Congress mandated by NVRA. The information required from the States will be specified to them in detail by the FEC well before the Act's implementation date. It will include voter registration as of election day; the number of new registrations since the previous federal general election; registration activity at various public agencies, and at other participating agencies; applications by mail, in person, and through community volunteers and organizations; file maintenance activity; and postal costs.

Ballots

Retention of **voted ballots and ballot-related documentation** is essential both to confirm correctness of the vote count and to detect corruption or other manipulation of the election. Ballots are specific to the type of voting system used. The category includes both ballots voted at the polls and absentee ballots; a single jurisdiction may use one kind of ballot at the polls and another for absentee voting, or may use more than one kind of voting system and therefore more than one kind of ballots in its polling places.

- **Paper ballots.**
- **Machine-read ballots, punchcard or mark sense.**

- **Strips or sheets placed on voting machines**, both lever and DRE, each annotated to indicate machine number and precinct where it was used. These are also called "ballot faces."
- **Sets of assembled vote recorder pages**, each annotated to indicate precinct where it was used.
- **Provisional ballots**, and all documentation associated therewith. Also called "special" or "affidavit" ballots. Used to permit a person to vote when his qualification for voting is uncertain and must be established after election in the central office before his ballot can be included in the vote count.
- **Spoiled ballots.**
- **Disallowed ballots**, and all documentation associated therewith.
- **Ballot accounting reports**, documenting disposition of and accounting for all ballots printed.

Polling Place Records Other Than Ballots

Most of the records listed are created for and used in the polling place on election day. Their range is extensive, and all serve a purpose for applying various provisions of law and carrying out directives of election authorities. Some are associated with qualifying the voter at check-in; some with vote-counting; others with special circumstances that occur in the course of the voting day. All are necessary to reconstruct the election and provide an audit trail for election day activity at the polls.

Some polling place documentation is created in the between-election periods; e.g., records of recruitment and assignment of pollworkers, and credentials issued to poll watchers.

- **List of voters** eligible to vote in the precinct at that election. May be a computer-generated or other printed list, or a binder of original

affidavits. The names of those who vote are checked off, or marked in some other way.

- Records containing **voter signatures** signed at the polls (if signature is other than on the list of voters), such as voting authority cards or signature cards.
- **Listing of those who voted** made by pollworkers.
- **Any other oaths executed by voters.**
- Any other record reflecting identity of those who cast ballots.
- Records of **challenges to any person's right to vote.**
- Records of **implementation of "fail safe" provisions of NVRA**, including information to be used to update the voter registration record.
- **Pollworker attestations of status of premises and equipment at opening and closing of polls.**
- **Documentation produced by pollworkers in counting the vote**, such as tally sheets, canvass reports, statements of votes, etc.
- **Output of voting devices**, both hard copy and electronic:
 - AVM print-o-matic sheets, both zero reports at opening of polls and vote totals at end of the day.
 - The lever machine itself (except for print-o-matic machines, see preceding), locked at the end of election day with the counters showing the number of votes cast.
 - Reports produced before opening polls as electronic tabulators (DREs, scanners, PBCs, etc.) are set up and prepared for voting. Includes logic and accuracy tests and zero reports.
 - Reports produced by voting device at close of polls, including vote totals or results tape.

- Removable data storage device (memory pack, PROM or EPROM, memory cartridge) intact as removed from machine at close of polls. (See Appendix 1 for alternative requirement recently defined by the U. S. Department of Justice.)
- Write-in votes cast if recorded other than on ballots. May be on paper roll from lever machine, or printed as part of the results tape as on DRE machine.
- **Records of maintenance to voting equipment during election day.**
- **Records of appointment of pollworkers serving.**
- **Records of appointment of poll watchers present in polls.**
- **Records of assistance to voters, including identity of persons rendering assistance and of voters assisted.**
- **Records of assignment and delivery of voting equipment to polling places.**
- **Envelopes in which ballots are returned by the voter—usually two for each ballot, the return envelope and the inner ballot envelope.** By postmark and/or date stamp, envelopes document the time of return, and one or both of them usually contain an oath of the voter and his signature. Includes envelopes containing ballots returned too late to be counted. Does not include blank secrecy envelopes, if such are used.
- **Records of challenges to and rejection of absentee ballots—**because they were received late; because the voter did not sign the oath or otherwise fill out affidavit on envelope; because the person does not qualify for absentee voting; etc.
- **Election office record or log of the steps in administering absentee voting.** In its simplest form, notations are made on the application forms, or on a list of applicants, of the date of application, the type of ballot sent and the date sent, receipt of voted ballot, etc. Identity of person who keeps the record also should be indicated.

Absentee Voting, Records Other Than Ballots

Documentation produced to administer absentee voting is designed to assure that a person qualifies for voting and for voting absentee; that a person voting an absentee ballot, or one purporting to be him, will not be able both to vote that ballot and also vote at the polls; and that the correct ballot is sent to the person in a timely manner and returned to the election agency no later than the deadline set by law. Moreover, documentation should demonstrate that if a request for absentee voting is rejected, or if a voted absentee ballot is disallowed, such actions of the election authorities are justified.

- **Application** or request from the voter, which starts the process. Election officials review the application and then respond to the applicant, either by dispatching a ballot or informing him why a ballot cannot be sent.

In a computerized election management system, there may be an absentee voting module which includes this information and more. Commonly these systems create and maintain (1) an activity log for each individual absentee applicant, linked to his record in the registry; (2) a roster of all applications received, where status of each is indicated; and (3) activity reports, such as applications received, approved and rejected; ballots dispatched and returned; etc. The end result is a complete history of the administration of absentee voting for that election.

Voting System Preparation

Whether voting is by manually counted paper ballots or the most sophisticated electronic system, certain basics of the preparation of the system are critical to the integrity of the election. These processes should be documented in order to confirm that integrity. When preparation steps

are computerized, a hard copy record should be produced and retained.

- **Election definition records.** These specify offices and questions that will be on the ballot, candidates for each office, number to vote for in each contest, precincts or precinct portions that comprise each constituency, cross-filing, etc. With non-electronic systems, or even early electronic systems, this process is often a manual one.
- **Ballot design records.** Utilizing information from the election definition process, such documents define and identify the various ballot styles and placement of contests and candidates in positions on the ballot, thus providing copy and layout for ballot printing. For non-electronic systems and some early electronic systems, ballot design is done manually.
- **Election database.** Electronically created documentation which encompasses both election definition and ballot design (see preceding) as well as other election-specific data.
- **Records of programming lever machines and testing correctness of the set-up.** Such programming is done manually, drawing on the election definition and ballot design processes, and then tested to confirm the reliability of the machine and that it is set up to accurately reflect votes cast on it.
- **Records of specializing vote-counting software for the particular election.** Includes "coding the program" for the mainframe or microcomputer in the central office, as well as preparing or "burning" the removable data storage devices for polling place tabulators.
- **Records of pre-election testing of electronic vote-counting systems.** The in-house testing done in the weeks before election to ensure that the programs have been correctly specialized.
- **Test deck.** A pre-audited group of ballots voted with a pre-determined number of valid

votes, used in testing electronic systems to confirm the correctness of the vote-counting program. Also called "certification deck."

Vote Count in Central Office

Both to resolve disputed elections and to respond to allegations of fraud, the documentation of vote count and canvass activity in the central office is critical. When the precinct totals are produced at the polling place, the central office count is limited to aggregating precinct results, manually or by machine, to obtain totals for the jurisdiction. When ballots are brought directly from the polls, the entire process from tally to canvass and certification takes place in the central office, and again may be manual or by machine.

- **Tally sheets.**
- **Canvass sheets and other tabulations.**
- **All computer software used in vote-counting.**
- **Output of the computer printer.** From the time the system is deemed ready for vote-counting on election day and starting with the testing done immediately before counting, through the last tabulation and post-count testing, one copy of each report printed should be compiled sequentially.
- **System log.** A sequential record of all entries to the system made through the console, from the time the system is readied for testing just prior to tabulation until after the count has been completed, the system is tested again, and results are ready for certification. Each entry should include date, time, person executing, and action(s) taken. May be either a manual listing or computer-produced.
- **Ballot images.** Records of votes cast on individual ballots; also called ballot sets. Particularly important with DRE machines where there is no paper ballot for each voter. Hard copy or electronic medium.

- **Verification of the count before certification.** If such verification is done, it should be documented. Examples of such verification include recounting all or a portion of the computerized ballots; re-reading and proofing lever machine vote totals; conducting an "automatic recount" (usually with a very close result); and the scrutiny by the State election authority of canvass documents submitted by local election boards, and retabulation of local results.
- **Security plan.** Arrangements for ensuring security of all appropriate election materials and premises, and documentation to demonstrate that the plan was carried out. Should also include record of any breaches of security.
- Records reflecting **certification of the outcome of the election, and notifications sent to winning candidates.**

Contested Elections and Recounts

Because federal officials have found that evidence of civil rights abuse and other election fraud often comes to light when an election result is challenged, the conduct of a recount or other means of resolving a contest should be documented. State regulations governing contested elections and recounts should require such documentation.

The obligations cited here will fall on the election office, State or local, if it is the authority responsible for resolving the dispute. Often the forum for resolution is a court or a quasi-judicial authority, where a full record is kept as a matter of course.

A contest or recount will utilize some of the documentation of the original election. In addition, there are certain records that are created anew, or specific to, the contest/recount. For example,

- **Procedures and guidelines.** These detail how, when and where the contest or recount

is to be conducted, and by whom; provisions for notice to parties and for observers; standards for disallowance of ballots; etc. May be in the form of State rules or regulations.

- **Log or diary** recording the activity.
- **Records created in the recount.** Some will document repetition of the processes of the original election such as pre-count testing of vote-counting equipment; output of voting devices; tally sheets; statements of votes; canvass reports; output of computer printer; system log; etc.

Redistricting

If a redistricting plan is challenged—and such challenges are not uncommon—election office data will be important in defending it. Accordingly, a cumulative file of the following should be maintained:

- **Election results by precinct** for each election;
- **Voter registration statistics by precinct** for each election;
- **Voter turnout statistics by precinct** for each election;
- **Precinct map or maps** defining boundaries at time of each election;
- **Computerized file of the voter registry** at time of each election.

Why Save Election Records?

The range and quantity of election documentation makes it clear that its retention imposes a substantial burden on election offices, and that no recommendation or requirement for retention should be made without good reason. By examining the purposes election documentation serves, it is possible to identify those records which should be retained.

Resolution of Election Disputes

Resolving election disputes through contests or recounts is the most familiar of all reasons for keeping election documentation. State election laws invariably contain provisions for resolving disputed elections. The deadline for initiating such an action is soon after election results are known because there is more than a little urgency to settle the dispute and determine the winner—after a primary so general election preparations can commence and after a general election so the new officeholder can begin his term.

Although the retention period for documentation to be used in a contest action is short, the amount of documentation affected is extensive. Here the appropriate rule is “Save everything” until the State’s deadline for filing a request for recount or contest has passed and, if there is such a filing, until the dispute is resolved. Records should be retained in their entirety and original format so that the election can be quickly reconstructed.

Lever machines should remain locked with the counters reading as they did when the polls closed. If the machines must be cleared and reset for another election while a contest procedure is still pending, the counter face can first be photographed to preserve the record of the vote in the contested election.

From electronic voting devices and systems, both hard copy output and data on electronic media—including the data in memory in DRE machines—are critical to a prompt determination. Removable data storage devices from DREs and scanners should be retained intact until the deadline for initiating a contest or recount has passed. Data preserved and available for use only as hard copy would have to be reentered, thus delaying completion of the resolution process.

Federal Law: The Civil Rights Act of 1960

Enacted by Congress at a time when the right to vote was emerging as an important civil right, and codified at 42 USC 1974-1974e, these provisions focus on abuse or violation of civil rights that occurs in the election process, and on election fraud that is not related to civil rights. The law applies only to elections in which a federal office is on the ballot, and is enforced by the Election Crimes Branch, Public Integrity Section of the Criminal Division, U. S. Department of Justice. The unit is well-grounded in the myriad ways elections can be, and have been, corrupted.

To carry out their responsibilities in assuring that the federal elective process is fairly and properly conducted, law enforcement officials must have the requisite evidence to conduct a criminal inquiry and either to prove or to disprove allegations of abuse or fraud. Accordingly, this federal law requires that election administrators preserve for 22 months after an election "... all records and papers which came into [their] possession relating to an application, registration, payment of poll tax, or other act requisite to voting." The Department interprets the language "records and papers" to include a wide range of specific election records, all of which are included in the listing presented as Appendix 1 of this report. ***The law does not require that the specific documentation listed be generated in connection with a federal election. However, if a record of any such type is submitted to or produced by the election authority, it must be retained.***

While the requirements are far-reaching, the Department points out that the law itself is comprehensive and its purpose vital. The document retention requirement assures that "... physical evidence needed to resolve legitimate public questions concerning the proper performance of the American electoral process is preserved intact for a sufficiently long period that it will be available to election administrators and investigators when questions arise." The statutes have been interpreted in keeping with the Congressional objective.

A recent Justice Department publication (see Appendix 2) emphasizes that "... These retention requirements are backed up with criminal misdemeanor penalties that apply to election officers and document custodians who willfully destroy covered federal election records before the expiration of the 22-month federal retention period. . . . Specifically, Section 1974 provides that any election administrator or document custodian who willfully fails to comply with the statute is subject to imprisonment for up to one year . . ." and "... election officers or other persons who willfully steal, destroy, conceal, or alter federal voting records required to be retained by § 1974 are also subject to one year of imprisonment."

Storage of materials during the 22 month period must be either in the direct custody of election officials or at least under their administrative supervision. For example, a jurisdiction may determine that the records generated in motor vehicle and social service agencies, in compliance with NRVA, would best be kept in those offices. If so, the law requires that the jurisdiction "have in place administrative procedures giving election officers ultimate management authority over the retention and security of those election records," and those procedures "should also contain provisions to hold those election officers responsible for retention and security breaches."

Section 1974 further requires that *original* documents be retained. Jurisdictions which digitize signatures and use facsimiles produced therefrom for election day voter lists or for verifying petition signatures, or States which microfilm the voter registration form, must also retain the original document for use, if need be, by federal investigating authorities. This is because handwriting analysis cannot at present be performed on digitized facsimiles or microfilmed reproductions.

Justice Department officials find that the retention periods specified in State election laws (typically six months, often less) are not usually long enough to assure that necessary voting records will be preserved until more subtle forms of federal civil rights abuses and election crimes have been detected. It normally takes longer than 60 days for evidence to surface that fraudulent voting practices took place in connection with a given election, or that federally secured voting rights were not sufficiently protected.

The length of the federal retention period is further explained by the Department's commitment to federalism, reflected in this instance by deference to the State process for resolving election disputes. They believe it should run its course before federal authorities step in. When an election result is challenged and resolved through the State's prescribed process, evidence of wrongdoing sometimes is revealed which can be the basis for a

federal prosecution. This is especially true in contested elections in which "irregularities" are alleged.

Finally, the federal prosecutors remind, it often takes a number of months for *reliable* information about an election to come forth. What surfaces at the time of the election and soon thereafter often is more rumor and gossip than fact, and sometimes no more than the grumbling of a loser who wants the election result questioned on the chance that he could turn into a winner.

The Elections Crimes branch will soon publish, for the benefit of the U. S. Attorneys and Federal Bureau of Investigation, a detailed description of the work of the branch and of the application of these statutes. *Federal Prosecution of Election Offenses*, 6th Edition, will be available sometime in 1994 from the U. S. Government Printing Office. In addition, Branch Director Craig Donsanto has written a summary of the particular federal statutes that relate to election documentation. This piece is directed to elections administrators and is included with this report as Appendix 2.

Federal Law: The National Voter Registration Act of 1993

The National Voter Registration Act of 1993 (NVRA), "Motor Voter," which will be effective in most States starting January 1 1995, requires a number of changes in methods of voter registration, registration file maintenance and polling place procedures. Among the changes are requirements for the creation and retention of certain election documentation.

As the States and the Federal Election Commission gain experience in administering the new law, new documentation will be developed and new determinations made as to which should be retained. Accordingly, insofar as they relate to NVRA, the retention requirements and recommendations of this report are tentative and subject to revisions as operational experience dictates.

The law itself includes some documentation mandates. One provision requires voter registra-

tion officials to maintain for at least 2 years and to make available for public inspection (and, where available, for photocopying at reasonable cost) "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered." The purpose of such record-keeping is two-fold. First, such records enable the registrar to maintain an accurate "inactive" file to support the "fail safe" process by which one who has been removed from the list in error can be restored and can vote on election day. Second, they make it possible to demonstrate that the methods by which a list is kept accurate and current ("list cleaning" activities) are nondiscriminatory and are otherwise in accordance with NVRA. The reason for the close scrutiny of list cleaning procedures is that such programs have often been applied unevenly or administered arbitrarily, and thereby have discriminated against certain segments of the electorate.

Other documentation retention requirements, implied but not specifically identified in the law, will enable the Federal Election Commission to make a mandated biennial report to the Congress on the impact of NVRA. The FEC will issue regulations to specify what information must be supplied by State and, in turn, by local election officials to meet this requirement and to comply with other provisions of NVRA.

Federal Law: The Uniformed and Overseas Citizens Absentee Voting Act of 1986

This law guarantees to members of the Uniformed Services and Merchant Marine, their spouses and dependents, and to civilian U. S. citizens residing abroad, the right to register and vote absentee in elections for federal offices. To facilitate that purpose, the law also provides for a Federal Post Card Application (FPCA) for registration

and absentee voting; it is widely distributed throughout the world. U. S. election authorities are required to respond to any application that is correctly filed by sending, in a timely manner, the appropriate absentee ballot.

The Act is administered by The Federal Voting Assistance Program in the Pentagon, and is enforced by the U. S. Department of Justice. To investigate charges that qualified applicants were not sent absentee ballots, or that ballots were dispatched too late to allow for a timely return, and other allegations of violations of the Act, the Justice Department often relies on absentee voting documentation in local election offices—absentee applications, ballots, and envelopes; records of challenges to and rejections of absentee ballots; and the record or log of the administration of absentee voting. Dating of such documents is crucial, since many of the violations charged involve ballots sent too late—because ballot-printing was delayed; because the election office did not respond promptly enough after the application was received, etc.

A ballot sent to an overseas location needs a number of weeks to make the round trip to the voter and back to the election office in time to be included in the vote count. Late dispatch by the election office can deprive the citizen of his franchise. Where cases involving delayed delivery to the voter have been litigated, courts have held 30-45 days to be the minimum time required between dispatch of the ballot and deadline for receipt of the returned ballot.

In the rare instances where qualified voters are at remote locations, or in situations where contact with the States can be made only infrequently, the Act also provides for a Federal Write-in ("blank") ballot which the voter can obtain from U. S. embassies, consulates or military installations. On such a ballot the voter can write in the candidates and offices for which he chooses to vote.

Redistricting Support

Redrawing of constituency boundaries, and defending those changes against challenges, is dependent on election-related documentation which is created and maintained by election administrators. Mostly statistical, but also graphic and narrative in nature, these documents are the essential underpinning, along with census data, to demonstrate compliance with the constitutional requirement for "one person, one vote" and the statutory mandate that boundaries be drawn in a nondiscriminatory manner. For the latter purpose, a computerized registration file for each election is recommended for retention. It will make possible a computer analysis of the electorate.

Documentation to support redistricting is not voluminous. Such records are statistical reports, election results, maps and/or other boundary descriptions, and voter registration data, all of which can be summarized at each election time, and accumulated so as to provide an up-to-date history. Permanent retention of these records is recommended, since redistricting challenges sometimes come as a result of a court decision or enactment of new legislation years after boundaries are drawn, and investigators often need a progression of records going back a number of years in order to discern a pattern of activity.

State Retention Policies and Practices

In General

Like everything else in election administration, the retention of election documentation varies widely among the States.

In some States the guidelines for retention of documents is only what is in the State code. It may be quite detailed or it may include only a few references to what must be saved, for how long, and by whom.

Whether they are embodied in law, regulations, or directives, State policies usually are directed to local election officials and relate to records over which they have control. Seldom do these policies include documentation under the control of the State election office. For example, State law usually provides for retention of tally sheets from the polling place, but not for retention of canvass records made up at State level. At the other extreme, one State election authority recently developed a "comprehensive and current policy for the purpose of document retention," but it applies only to the Secretary of State's office and does not include such items as ballots, voter registration records, absentee voting materials, tally sheets and voter lists for check-in at the polls.

Finally, policies in most States do not reflect the technological transformation in election record-keeping, and fail even to mention documentation on electronic media and/or to provide for its retention.

Specifics of State Retention Policies Currently in Place

A survey of the 50 States and the District of Columbia to determine their current retention requirements reflects the wide variance in their practices, and—in most instances—their limited scope. A number of States do not retain, or do not retain for 22 months, all the documentation specified by the Justice Department as requisite for compliance with federal law.

Voter Registration

In almost all the States, *the original voter registration document* is preserved for the entire time the registration is on the active file and for a period of time thereafter. Only five States reported a post-cancellation retention period less than 22 months; in 14 States the period is 22 to 25 months, in another 14 it is 3 to 10 years, and 14 retain the originals permanently. One State microfilms the original after the data been entered into the computer file, destroys the original and retains the microfilm permanently.

Retention of the *documentation which authorizes changes* in voter registration data, or of programs and activity conducted for the purpose of ensuring the accuracy and currency of addresses of eligible voters is not common. This will change as NVRA is implemented, and as the Justice Department's updated election documentation retention requirements become known.

Ballots

Ballots cast are retained in most of the States, and usually for 22 months or more—at least in federal elections. Seven States, however, reported that ballots are saved only a shorter period—ranging from 10 to 90 days.

About half the States save the **challenged ballots**, and about a third create and retain **ballot accounting** records.

Polling Place Records

Voter lists on which voters are checked off when they come to the polls are retained by most of the States, and for federal elections the period is usually 22 months or more. A few respondents reported periods as long as five or ten years.

Tally sheets and canvass reports are retained for the 22 month period, as are printed output of lever machines and hard copy records generated by the various electronic precinct tabulators including DREs. Less commonly held for 22 months are records relating to **challenges to voters**, records of **appointment of pollworkers** and poll watchers, and records of **assistance to voters**. Where voter assistance records are made and retained, they usually consist only of the record of the assisted voter, not of the person who rendered the assistance—an omission that could handicap post-election detection of improper influence or intimidation. Only a few States report that they keep records of **maintenance and/or repairs of voting equipment** during election day.

One type of documentation that is typically not retained more than a short time is the **removable data storage device used in electronic precinct tabulators** (scanners, PBCs, DREs) to record and cumulatively tabulate the vote as it is cast. The reason is obvious: these units—cartridges, memory packs, PROMs, etc.—are expensive, ranging in price from \$250 to \$500 each. Following an election they sometimes are retained intact for use in a recount, but after that they must be erased and reprogrammed for a subsequent election. To require that the memory pack be retained with election

results on it for 22 months would mean buying four such microprocessors for each machine, a considerable increase in the price of the equipment.

Data on these removable storage devices are important principally for two purposes: (1) to verify and validate the vote count in the event of a contest or recount, and (2) as original evidence useful, even crucial, to federal law enforcement officials if a civil rights abuse or election fraud is charged.

For the first-listed purpose, it is recommended that the data storage device be retained, intact as it was removed from the precinct tabulator at the close of the polls, until the deadline for initiating a contest or recount action has passed.

For the other purpose—to serve as evidence in a post-election investigation initiated by federal law enforcement officials—the question of how long to save the data storage device becomes more difficult to answer. Federal criminal investigations often do not start until months after election and the primary focus is not “who won” but “was the process corrupted and who did it.”

Most States that use DREs and other electronic precinct tabulators have no retention requirement for the removable data storage devices. Their practices vary, and for the most part are not included in written regulations or procedures. Some States do retain the machines and the removable devices intact until the recount or contest deadline has passed; for any investigation after that time, they rely for documentation on the “paper work” produced by the system as the database is created and the storage devices are prepared for each machine. Even States that have a comprehensive retention policy, saving all other polling place documentation for 22 months or more, report that PROMs or other memory cartridges are erased soon after election, typically thirty days but sometimes less. For example, “the detailed and regulations in Oklahoma, where electronic scanners are used in every precinct in the State, include no retention requirement for PROMs. The established practice is to save the

data "3 days or until a contest is resolved." (Deadline for initiating a contest in Oklahoma is 3 days after election.)

Only one State, in its written policies, recognizes that the removable data storage device could be critical to establishing the integrity of the election. The Wisconsin statute was amended in 1992 to provide as follows in this regard:

Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates. (7.23 (1) (g) Wis. Stat. Emphasis supplied.)

Wisconsin election officials report that some of the scanner systems used in the State, those where ballots are tabulated at a central location with a high speed reader, are able to transfer the data to disk or other recording medium, but the data from precinct tabulators cannot be transferred. Those user jurisdictions have had to retain the chip or the entire PROM, and bear the considerable expense of buying additional PROMs for the elections that occur during the 22 month retention period.

The Department of Justice, in updating its retention requirements to reflect the realities of the widespread use of computerization in elections, has specified retention requirements for the data storage device as follows:

"With respect to electronic/computerized vote recording or tabulation equipment utilizing removable programable data storage devices ('PROMs'), or other similar memory storage devices, [retain] the following:

a. The 'PROM' or electronic memory storage device itself, intact, and as removed from the voting machine at the close of the polls; or,

b. An electronic record of the program by which votes are to be recorded or tabulated, which is captured *prior* to the election, and which is stored on some alternative medium (e.g., floppy disks) simultaneously with the 'burning' of the PROM or other memory storage device, and,

c. With respect to the output from a PROM or other memory storage device *after* the election has been concluded—

i. In voting systems utilizing individual Precinct Ballot Counters (PBCs) or optical scanners: the hard copy output from the PROM or other electronic memory storage device used to record and/or to tabulate votes, (*i.e.*, the 'results tape'), or

ii. In voting systems using centralized counting devices wherein the results of several PROMs or other memory storage devices are synthesized into a single consolidated output report or 'results tape': the hard copy output from the PROM or other electronic memory storage device, and the hard copy consolidated output report or 'results tape,' and the electronic program used to read the individual PROMs or other electronic memory storage devices and by which the consolidated output report was produced."

(Source: "Categories of records covered," in *Retention of Voting Records under 42 USC §§ 1974 et seq.*, by Craig Donsanto, included in this report as Appendix 2.)

Absentee Voting Documentation (other than ballots)

Federal law requires the retention of *applications* for absentee voting and of the *envelopes* in which the ballots are returned. Almost all the States do so, and only a few of them specify a period less than 22 months.

Logs of absentee voting activity, often computerized, are created in a number of States and retained to provide a history of absentee voting in an election.

Voting System Preparation Records

Fewer than half the States retain any records of voting system preparation. If anything is saved, it is the *pre-election testing* of the system for reliability and counting accuracy, in the central office, the polling place, or both. Virginia, where DREs have replaced mechanical lever machines in a number of localities, reports that the electronic machines provide greater assurance of adequate testing because they automatically produce their own documentation of the process; for the lever machines, Virginia has to depend on a manually marked check list to confirm that the tests were performed.

Few States maintain records of *specializing the vote-counting software* for an election, and very few document their *provisions for security* of equipment, materials and premises.

Documenting the Central Office Vote Count

States that count votes manually maintain their *tally sheets and canvass reports* for periods varying from 10 days to permanently. Computer *vote-counting programs* usually are retained for a period varying from 10 days to 10 years, as are the *output of the computer printer* and the *system log*. In many of the retention requirements, 22 months is a common duration, reflecting the standard set in federal law.

Problems in Documentation Retention

The biggest problem in administering a documentation policy is space for storage. Ohio laments "Storage! Storage! Storage! Counties that have central record centers are fortunate." Michigan reports that shortage of storage is most acute in rural townships with outdated township halls, where many documents are retained at the clerk's residence. And Oklahoma notes that "many counties have had to adapt filing cabinets and other storage systems designed for manual records to computer-generated reports, which are larger than the old records."

Divided authority between State and local offices is a recurring problem; policy is set by the State election office but most implementation is at the local level where the documentation is produced. A number of States report that they cannot compel local officials to supply data so they can conduct oversight of retention practices. Iowa finds "It is hard to convince counties that have never had a contested election that there is a need to keep things 'just in case'." Minnesota reports that there is "no quality control" in many local offices, and that "administrative recounts occasionally disclose poor retention of peripheral materials such as absentee ballot return envelopes or write-in tally sheets."

Other problems reported include (1) confusion because retention requirements vary among the types of documentation and with the kind of election; (2) the need to use voting equipment and materials for an election which occurs within the documentation retention period after a previous election; (3) difficulty in retrieval.

In West Virginia's observation on documentation retention problems one can detect more than a little frustration: "Lack of clarity in law. Lack of space at county level. Lack of security. Lack of time to focus on records management and no personnel to spare for the project."

Supervision of Documentation Retention

State election officials exercise a varying measure of supervisory authority over local election boards, ranging from almost none to close monitoring. In some instances the State authority does not even know what the practices are at the local level and suspects that there is little uniformity between and among the jurisdictions. One New England state reported that matters of documentation retention are "handled individually at the local level" and the "Secretary of State's office does not get involved." A western State reported simply that "no official election document retention policy is in place at this time."

State policies, usually statutory provisions, often ignore the federal law requiring retention of ballots and other election records for 22 months, and provide in their code for lesser periods—though at least four times in each two year period these requirements are superseded because a federal office is on the ballot. It is hard to believe that State authorities are unaware of a federal requirement enacted more than thirty years ago. Perhaps they do not consider it their responsibility to inform or direct local officials regarding their retention responsibilities in federal elections. Other States *have* accepted their obligation to direct and inform; their codes have been amended or annotated, and their regulations updated, to encompass the longer retention requirements. Indiana decided in 1993 to regularize election document retention policy and now "requires all election documentation to be kept for 22 months following the election for which the documents were generated." Before 1993 "... state law provided a different retention schedule for almost every type of election document ..." and there was a considerable amount of confusion among county officials. The State has solved the problem by "... creating a uniform retention time, and by providing training to officials who administer the law."

The Retention Schedule

An effective instrument for administering documentation retention policy is the document retention schedule. About half the States now have such a schedule, sometimes developed in cooperation with a State records management or archives agency. The schedule facilitates compliance with retention requirements in the local election offices, where most of the election documentation is created and must be saved. It supports those officials by assuring that they are aware of the requirements of law, both State and federal, and of other State directives or guidelines, that they know what has to be saved and for how long, and when records can be discarded.

No doubt some local officials whose State authorities do not supply a retention schedule develop one for themselves. But such a method means that there will be no uniform understanding of and compliance with retention requirements, and that there will be needless duplication of effort in policy formulation.

Characteristics and content of State retention schedules vary:

- ☐ Some are comprehensive, some sketchy.
- ☐ Some include only documents mentioned in the state code, and the retention requirements cited therein; some include these and also the records related to compliance with federal law.
- ☐ Some States supplement legal requirements with regulations and administrative directives.
- ☐ Most apply only to local elections offices; a few apply only to the State election authority or to both State and local.
- ☐ Few make any reference to documents on electronic media.

Some of the good retention schedules are cited here, both to indicate the various approaches

taken in the States and to suggest where models can be obtained for a State developing or revising its own retention policies:

Connecticut: Comprehensive and detailed retention schedule. Applies to both State and local officials. Begins with a references to 42 USC 1974, cites its application to elections for federal office and notes that "This requirement supersedes any state statute or regulation." In addition, the detailed, day-by-day "Election Calendar" prepared by the Secretary of State for each election includes discard dates for specified election records.

Delaware: Retention schedule produced by State Archives. Listing divided into paper documents and computer output.

Iowa: Schedule is simple and clear, quite comprehensive, and recently revised. Includes only documents for which there is a State statutory provision for retention. A few of the listed documents are computer output.

New York: Retention schedule created by State for use by local election boards. Comprehensive listing of records by type, rather than specific name; local board is to adapt it to fit its own systems and terminology. Applies to records on paper and on electronic media. Recognizes the essentiality of electronic records, and the need to ensure that they are created and maintained properly. Good introduction on purposes of retention and implementing the schedule.

North Carolina: Standard 4 and Standard 6, respectively, apply to electronic media records and to records on paper.

Oklahoma: Election administration in the State is highly centralized; the State Board has a broad grant of supervisory authority over the county election boards. The Oklahoma Election Management System (OEMS), statewide and computerized, is used in all counties and linked with the State office. There is a listing of all reports produced by OEMS, and for each report the retention period, if any, is indicated. Applies only to output on paper. In addition, the "Secretary's

Digest" is published regularly to update the rules and regulations of the State Election Board; some updates are documentation retention requirements relating to both paper and electronic records.

Virginia: Retention and Disposition Schedule for election records produced by State Archives and Records Division for use by local election authorities. Includes records specifically cited in Virginia code and certain other records, retention of which is required for compliance with 42 USC 1974-1974e. Does not include electronic documentation—e.g., "memory cartridges" for DRE machine.

West Virginia: Retention schedule first produced 1993. Simple and clear in format; comprehensive. Includes only records cited in State code, which has been amended to include the 22 month retention period required by federal law. Little reference to documentation related to electronic voting systems.

Wisconsin: Schedule produced by State Elections Board for use by local election officials. Clear and comprehensive. Includes only the items specified in State law, but requires the 22 month retention period in federal elections for certain of them. Also includes the "detachable recording units" on electronic voting equipment.

Guidelines for a State Election Documentation Retention Policy

Deciding what should be saved is a trade-off between what might possibly be needed in the future and what can be accommodated given the manpower and storage resources available—except that in some instances State or federal law dictates specifics of the policy.

Most of the burden of retention falls on the local election authority, but the retention policy should be established at the State level in order to ensure uniform application. Moreover, the State authority, exercising its supervisory responsibility, should support and monitor the work of

local offices to ensure that the standards are uniformly applied.

Responsible retention policy should recognize that the computer is a major factor in election administration, and should utilize the full potential of computerized systems to generate documentation. When documentation is on electronic media, storage conditions should be such that the integrity of data will be maintained for the required length of time.

A documentation retention schedule is essential. It should be kept current as new kinds of records come into use, new laws are passed, and new programs implemented. It should be comprehensive and specific, and training should be provided for local officials to ensure their understanding and guarantee compliance.

Appendix 1 to this report makes recommendations for documentation to be included in a retention schedule, the purpose served by such records, the applicable federal law (if any), and the period for retention. It could be a useful starting point for a State establishing retention policy, tailoring the content to be appropriate to its own law, practices, and traditions.

Appendix 1

Election Documentation Requirements and Recommendations

ELECTION DOCUMENTATION

Requirements and Recommendations

Introductory notes:

All documentation should be *dated*; in some instances, *time* also should be indicated.

Records on electronic medium (magnetic tape, disk, etc.) should be stored in such a way that their integrity is ensured for the duration of the retention period.

Certain kinds of election office records are excluded from this study (see text, Chapter I) and therefore are not included in the following listing.

Rationale for recommendations is in the text of the report, Chapter II.

State law or directives may require retention of documents other than those listed, or may require retention of a listed document for a longer period than is specified in this table.

Footnotes are at the end of the table.

Symbols used in last column, "Purpose or Applicable Federal Law:"

- 1 Civil Rights Act of 1960, 42 USC 1974 et seq. This law does not *require* that any particular record be generated. But if generated, and if it is on this list, it must be retained for the 22 month period.
- 2 NVRA, National Voter Registration Act of 1993 ("Motor Voter"). 42 USC 1973 gg-6(i).
- 3 Federal Election Commission regulations pursuant to NVRA, to be published 1994.
- 4 Uniformed Overseas Citizens Absentee Voting Act of 1986. 42 USC 1973ff et seq; 39 USC 3406; and 18 USC 608-609.
- A Contested elections and recounts.
- B Redistricting support.

Kind of documentation	Retention Period	Purpose or Applicable Federal Law
VOTER REGISTRATION		
Original voter registration form	22 mos. past the last federal election in which the voter was eligible to vote	1
Authorization/request for change of address, name, party, etc.	22 mos.	1
Authorization/request to cancel registration.	22 mos.	1
All records generated in course of producing acknowledgment notices, confirmation mailings, mail verification or any other confirmation of voter status.	2 yrs.	1, 2
Notices returned to election offices by registrants responding to verification or confirmation mailings.	2 yrs.	1, 2
Rejected applications for voter registration.	22 mos.	1

Kind of documentation	Retention Period	Purpose or Applicable Federal Law
Declinations to register at public assistance agencies.	22 mos.	1
Statistical records of registration, voting and file maintenance activity required for biennial reporting to FEC.	2 yrs.	2

BALLOTS AND RELATED DOCUMENTATION

All voted ballots, paper or machine-read, including absentee ballots.	22 mos.	1, A
Strips or sheets mounted on lever or DRE voting machines (ballot faces), each identified by machine number and precinct.	22 mos.	1, A
Assembled vote recorder pages (Votomatic), each identified by precinct.	22 mos.	1, A
Provisional ballots and documentation associated therewith.	22 mos.	1, A
Spoiled ballots.	Until State deadline for initiating contest or recount has passed.	A
Rejected or disallowed ballots and documentation associated therewith.	22 mos.	1, A
Ballot accounting report.	Until State deadline for initiating contest or recount has passed.	A

POLLING PLACE RECORDS OTHER THAN BALLOTS

List of voters used in each polling place.	22 mos.	1
Records containing voter signature, including any oath executed by voter.	22 mos.	1
Listing of those who voted, made by pollworkers.	22 mos.	1
Any other record reflecting identity of those who cast ballots.	22 mos.	1
Records of challenge to any person's right to vote.	22 mos.	1
Records of implementation of "fail safe" provisions of NVRA.	22 mos.	1
Voter assistance records, identifying both voter assisted and person(s) rendering assistance.	22 mos.	1
Tally sheets, canvass reports, statements of votes.	22 mos.	1
Lever machine, locked at close of polls (non-printer machines only)	Until State deadline for initiating contest or recount has passed. ¹	A

Kind of documentation	Retention Period	Purpose or Applicable Federal Law
AVM Print-o-matic report sheets, opening and closing of polls.	22 mos.	1
Removable data storage device (PROM, memory pack, cartridge,, etc.)	For purpose of recount or contest resolution, retain intact until State deadline for initiating contest or recount has passed.	A
	For compliance with USC 42 1974 et seq., retention period is 22 mos. <i>Either</i> save the data storage device itself, or save, on electronic medium, record of programming the device, and the post-election hard copy of its output plus the program used to read the device. For detail, see. ²	1
Pollworker attestations of status of premises and equipment at opening and closing of polls.	22 mos.	1
Reports produced by electronic voting device at opening and	22 mos.	1, A
Records of write-in votes, if cast other than on a ballot.	22 mos.	1, A
Records of ballot images, or ballot sets, produced by electronic voting devices.	22 mos.	1, A
Records of service or maintenance to voting equipment at the polling place.	cumulative, permanent	1 ³
Records of pollworker appointment and service.	22 mos.	1
Records of pollwatcher/challenger appointment and service.	22 mos.	1
Records of assignment and delivery of voting equipment.	22 mos.	1

ABSENTEE VOTING OTHER THAN BALLOTS

Applications for absentee voting.	22 mos.	1, 4, A
Envelopes in which absentee ballots are returned, including those returned too late to be counted, but excluding blank secrecy envelopes if such are used.	22 mos.	1, 4, A
Records of challenges to and rejection of absentee ballots.	22 mos.	1, 4, A
Records or log of the administration of absentee voting.	22 mos.	1, 4, A

Kind of documentation	Retention Period	Purpose or Applicable Federal Law
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VOTING SYSTEM PREPARATION

Election database, election definition, ballot design.	22 mos.	1, A
Records of programming and testing of lever machines.	22 mos.	1, A
Records of specialization of vote-counting software.	22 mos.	1, A
Records of programming ("burning") removable data storage devices for precinct tabulators.	22 mos.	1
Records of pre-election testing of electronic vote-counting systems.	22 mos.	1, A
Test deck(s).	22 mos.	1, A

VOTE COUNT IN CENTRAL OFFICE (or at regional site)

Tally sheets, canvass sheets.	22 mos.	1, A
All vote-counting software.	22 mos.	1, A
One copy of all output of computer printer.	22 mos.	1, A
System log.	22 mos.	1, A
Ballot images, or ballot sets, produced by electronic voting devices.	22 mos.	1, A
Records of any verification of the count done before certification.	22 mos.	1, A
Records documenting plan and activity to ensure security of records, ballots, equipment and premises, including any breaches of security.	22 mos.	1, A
Records reflecting the certification of the outcome of the election, and copies of notifications sent to winning candidates.	22 mos.	1

CONTESTED ELECTIONS AND RECOUNTS

Procedures and guidelines.	22 mos.	1, A
Log or diary of activity.	22 mos.	1
Records created for and during the recount.	22 mos.	1

REDISTRICTING

Election returns by precinct for each election	permanent	B
Voter registration statistics by precinct for each election.	permanent	B
Voter turnout statistics by precinct for each election.	permanent	B

Kind of documentation	Retention Period	Purpose or Applicable Federal Law
Precinct map or maps, with boundaries in effect at time of each election.	permanent	B
Computerized file of the voter registry at time of each election.	permanent	B

¹ If machine must be cleared and reset for subsequent election before expiration of retention period, the face of the machine showing the counters with vote totals can be photographed before clearing.

² Specifically, the Justice Department has defined the requirement is as follows:

"With respect to electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices ('PROMs' or other similar memory storage devices), [retain] the following:

- a. The 'PROM' or electronic memory storage device itself, intact, and as removed from the voting machine at the close of the polls; *or*,
- b. An electronic record of the program by which votes are to be recorded or tabulated that is captured *prior* to the election, produced on some alternative medium (e. g., floppy disks) simultaneously with the 'burning' of the PROM or other memory storage device, *and*,
- c. With respect to the output from a PROM or other memory storage device *after* the election has been concluded:
 - i. In voting systems utilizing Precinct Ballot Counters (PBCs) or optical scanners, the hard copy output from the PROM or other electronic memory storage device used to record and/or to tabulate votes (*i. e.*, the 'results tape', *or*
 - ii. In voting systems using centralized counting devices, wherein the results of several PROMs or other memory storage devices are synthesized into a single consolidated output report or 'results tape' the hard copy output from each PROM or other electronic memory storage device, *and* the hard copy consolidated output report or 'results tape,' *and* the electronic program that was used to read the individual PROMs or other electronic memory storage devices and by which the consolidated output report was produced."

(Source: "Categories of records covered", in *Retention of Voting Records under 42 U. S. C. §§ 1974 et seq.*, by Craig Donsanto, included with this report as Appendix 2.)

³ These records are essential also for post-election attention, to ensure that the equipment will be functioning correctly in subsequent elections.

Appendix 2

Retention of Voting Records Under 42 U.S.C § 1974

By Mr. Craig C. Donsanto

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Retention of Voting Records Under 42 U.S.C. § 1974

By Craig C. Donsanto¹

The purpose of this article is to provide guidance to election administration professionals and to state legislatures on the practical application of the federal election document retention requirements of 42 U.S.C. §§ 1974 through 1974e (hereafter referred to as "Section 1974") to the modern election administration process.

Section 1974 is a federal statute that requires election administration officials to retain intact and in a secure environment all records developed by the voting process that are "requisite to voting" in elections where federal candidates were voted upon. This statute contains criminal penalties for those who violate it intentionally in election involving federal candidates. Those penalties are enforced by the Public Integrity Section, Criminal Division, United States Department of Justice.

Section 1974 was enacted in 1960. This was prior to the development of computer voting technologies which today are common features of the modern election administration process in most states. It was also long before the passage of the National Voter Registration Act (NVRA) in 1993,² which sets federal standards and procedures for registering voters throughout the United States, and imposes document retention requirements of its own. These significant—and recent—developments in the procedural aspects of American election processes have created a need on the part of election administrators for an updated exposition of the reach of the federal election document requirements of Section 1974 to modern election technologies. That is the objective of this article.³

The last article that I wrote concerning these statutes appeared in the Federal Election Commission's "Journal" in 1986. This paper will update the discussion in that earlier piece in light of the developments just noted. In addition, it is my hope that the remarks that follow will provide the election administration community with more definitive guidance concerning the reach of these important election document retention laws in the context of modern election administration.

¹Director, Election Crimes Branch, Public Integrity Section, Criminal Division, United States Department of Justice. The assistance of Marie Garber, former Chair of the Maryland State Election Board, and William C. Kimberling of the Federal Election Commission in the preparation of this article is acknowledged and appreciated.

²42 U.S.C. §§ 1973gg through 1973gg-10 inclusive.

³Nothing contained in this article is intended to confer substantive or procedural rights on members of the public, or upon those whose activities may fall within the scope of the criminal provisions of the statutes discussed.

■ Legislative purpose and background

The voting process generates voluminous documents and records, ranging from voter registration forms and absentee ballot applications to ballots and tally reports. If election fraud occurs, these records often play an important role in the detection and prosecution of the crime. Documentation generated by the election process also plays an equally important role in the detection, investigation and proof of federal civil rights offenses.

State laws generally require that voting documents be retained for sixty to ninety days. Those relatively brief periods are usually insufficient to make certain that voting records will be preserved until more subtle forms of federal civil rights abuses and election crimes have been detected.

Congress therefore included in the Civil Rights Act of 1960 a legislative provision that extended the document retention period for elections where federal candidates were on the ballot to *twenty-two months* after the election. Pub. L. 86-449, Title III, § 301, 74 Stat. 88 (May 6, 1960); 42 U.S.C. §§ 1974-1974e. This election documentation retention requirement is backed-up with criminal misdemeanor penalties that apply to election officers and document custodians who wilfully destroy covered election records before the expiration of the 22-month federal retention period.⁴

The retention requirements of Section 1974 are aimed specifically at election administrators. In a parochial sense, these laws place criminally sanctionable duties on election officials. However, in a broader context, this federal retention law assists election administrators perform more efficiently the tasks of managing elections, and determining winners of elective contests. It does this by requiring election managers to focus appropriate attention on the types of election records under their supervision and control that may be needed to resolve challenges to the election process, and by requiring that they take appropriate steps to insure that those records will be preserved intact until such time as they may become needed to resolve legitimate questions that frequently arise involving the election process. In this way, Section 1974 serves the election administrators by better equipping them to respond to legitimate questions concerning the voting process when they arise.⁵

■ The basic requirements of Section 1974

Section 1974 requires that election administrators preserve for twenty-two months "all records and papers which come into their possession relating to any application, registration, payment of poll tax, or other act requisite to voting." This retention requirement applies to all elections in which candidates for federal offices were on the ballot. Federal elective offices mean the United States Senate, the United States House of Representatives, President of the United States, Vice President of the United States, and Presidential Elector). Section 1974 does not apply to records generated in connection with purely local or state elections.

⁴ Specifically, Section 1974 provides that any election administrator or document custodian who wilfully fails to comply with the statute is subject to imprisonment for up to one year. Under § 1974a, election officers or other persons who wilfully steal, destroy, conceal, or alter voting records required to be retained by § 1974 are also subject to one year of imprisonment.

⁵ Indeed, the federal courts have recognized that the purpose of this federal document retention requirement is to protect the right to vote by facilitating the investigation of illegal election practices. *Kennedy v. Lynd*, 306 F.2d 222 (5th Cir. 1962), *cert. denied*, 371 U.S. 952 (1963).

Retention and disposition of records in purely nonfederal elections (those where no federal candidates were on the ballot) are governed by state document retention laws.

However, Section 1974 does apply to all records generated in connection with the process of registering voters and maintaining current electoral rolls. This is because voter registration in virtually all United States jurisdictions is "unitary," in the sense that a potential voter registers only once to become eligible to vote for both local and federal candidates. See *United States v. Ciancuilli*, 482 F.Supp. 585 (E.D.Pa. 1979). Thus, registration records must be preserved as long as the voter registration to which they pertain is considered an "active" one under local law and practice, and those records cannot be disposed of until the expiration of 22 months following the date on which the registration ceased to be "active."

This statute must be interpreted in keeping with its congressional objective: Under § 1974, all documents and records that may be relevant to the detection or prosecution of federal civil rights or election crimes must be maintained if the documents or records were generated in connection with an election which included one or more federal candidates.

■ Section 1974 requires document preservation, not document generation

Section 1974 does *not* require that states or localities produce records in the course of their election processes. However, if a state or locality chooses to create a record that pertains to voting, it is the Criminal Division's position that this statute requires that documentation to be retained if it pertains to voting in an election covered by the statute.

■ Categories of records covered

In keeping with the wording and legislative purpose behind this election document retention statute, it is the writer's opinion that Section 1974 covers the following categories and types of records generated by the modern voting process:

1. All voter registration records, including applications for voter registration that were rejected;
2. Registration documents developed under the NVRA, as well as records of declinations to register under the NVRA;
3. Authorizations and requests for cancellation of, or changes to, voter registration records, including any documentation generated in connection with assessing or adjudicating a change or cancellation action;
4. Voted ballots, including absentee ballots and all records of write-in votes cast;
5. Applications for ballots, including applications for absentee ballots;
6. Envelopes in which voted absentee ballots are returned to election officers, including absentee ballot envelopes and absentee ballots that are returned too late to be tabulated;
7. Ballots that have been rejected, and records associated therewith;
8. Ballots that were voted under state "challenge-voting" or "provisional-voting" proce-

dures (i.e., "affidavit" or "special" ballots), and all documentation associated therewith;

9. All records pertaining to the making and the adjudication of challenges to voters;
10. Poll lists and similar records reflecting the identity of individuals voting at the polls, whether in hard copy or stored on electronic media;
11. Records pertaining to voters being assisted in voting;
12. Logs and other records pertaining to the administration of absentee voting, whether in hard copy or stored on electronic media;
13. All documents containing the signatures of voters (including poll lists, challenge affidavits, registration records, voting authority cards, etc.);
14. Tally sheets and reports of canvasses of votes, whether in hard copy format or stored on electronic media;
15. Records reflecting the appointment and service of persons to act as poll officials or poll watchers;
16. Records, whether in hard copy format or stored on electronic media, reflecting election definition (for example, computerized "election data bases," and records reflecting constituency boundaries, ballot design, polling place staffing, voting equipment assignment, etc.);
17. Records, whether in hard copy format or recorded on electronic media, pertaining to the programming and/or testing of mechanical and electronic voting equipment and systems, including the "test decks" in jurisdictions where they are used;
18. Records, whether in hard copy format or stored on electronic media, pertaining to the specialization or particularization of vote counting software;
19. With respect to electronic/computerized vote recording or tabulation equipment utilizing removable programmable data storage devices ("PROMs"), or other similar memory storage devices, the following:
 - a. The "PROM" or electronic memory storage device itself, intact, and as removed from the voting machine at the close of the polls; *or*
 - b. An electronic record of the program by which votes are to be recorded or tabulated, which is captured *prior* to the election, and which is stored on some alternative medium (e.g., floppy disks) simultaneously with the "burning" of the PROM or other memory storage device, *and*
 - c. With respect to the output from a PROM or other memory storage device *after* the election has been concluded—
 - i. In voting systems utilizing individual Precinct Ballot Counters (PBCs) or optical scanners: the hard copy output from the PROM or other electronic memory storage device used to record and/or to tabulate votes (for example, the "results tape"),
or

-
- ii. In voting systems using centralized counting devices wherein the results of several PROMs or other memory storage devices are synthesized into a single consolidated output report or "results tape": the hard copy output from each PROM or other electronic memory storage device, *and* the hard copy consolidated output report or "results tape," *and* the electronic program that was used to read the individual PROMs or other electronic memory storage devices and by which the consolidated output report was produced.
 20. All other computer programs utilized to tabulate votes electronically;
 21. All records generated during recounts, whether in hard copy format or stored on electronic media;
 22. The strips or sheets mounted on mechanical lever and electronic voting machines containing candidate names and ballot positions (the "ballot face"), each identified by machine number and ballot face;
 23. The assembled vote recorder pages in precincts using Votomatic equipment, each assembly being identified by precinct;
 24. All records bearing upon plans for, and implementation of, premises security for areas where voting equipment is stored, where voting and vote tabulation is conducted, and where voting documentation is stored pursuant to Section 1974, including all records of breaches of security;
 25. Reports on the status of polling sites at the opening and closing of the polls;
 26. Reports produced by voting devices at the opening and the closing of the polls, including testing reports, the zero report, and the results tape;
 27. Records pertaining to the service and maintenance of voting equipment at the polling site;
 28. Records of the assignment and delivery of voting equipment to the polling site;
 29. Records of ballot images, or ballot sets, produced by electronic voting devices.
 30. All records representing output of computer printers generated in connection with elections using electronic voting equipment;
 31. The "system log" that keeps a record of each entry into the tabulation system (sometimes called the "console log"), in elections using electronic tabulation equipment;
 32. Records of the process used to verify the vote-count prior to election certification, in elections using electronic voting equipment (*e.g.*, random sample hand-counts of ballots); and
 33. Records reflecting the certification of the outcome of elections, and copies of notifications sent to winning candidates (*i.e.*, "Certificates of Election").

■ Originals versus copies

Section 1974 further requires that the original documents be maintained, even in those jurisdictions that have the capability to reduce original records to digitized replicas. This is because handwriting analysis cannot at present be performed on digitized reproductions of signatures, and be-

cause the legislative purpose advanced by this statute is to preserve election records for their evidentiary value in criminal and civil rights lawsuits. Therefore, in states and localities that employ new digitization technology to archive election forms that were originally manually subscribed by voters, Section 1974 requires that the originals be maintained for the requisite 22-month period.

■ Election officers must supervise storage

Section 1974 requires that covered election documentation be retained either physically by election officials themselves, or under the direct administrative supervision of election officers. This is because the document retention requirements of this federal law place the retention and safe-keeping duties squarely on the shoulders of election officers, and Section 1974 does not contemplate that this responsibility be shifted to other government agencies or officers.

An electoral jurisdiction may validly determine that election records subject to Section 1974 would most efficiently be kept under the physical supervision of government officers other than election officers (e.g., motor vehicle departments, social service administrators). This is particularly likely to occur following the enactment of the NVRA, which for the first time in many states gives government agencies other than election administrators a substantive role in the voter registration process.

If an electoral jurisdiction makes such a determination, Section 1974 requires that administrative procedures be in place giving election officers ultimate management authority over the retention and security of those election records. Those administrative procedures should insure that election officers retain ultimate responsibility for the retention and security of covered election documents and records, and that election officers retain the right to physically access and dispose of them.

■ Retention not required for certain records

Section 1974 does not apply to surplus voting materials that are not used in elections where federal candidates were on the ballot. Examples of such surplus materials include unused ballots and forms, inventories of supplies, payroll and personnel records pertaining to the hiring, training or payment of election officials, and other documents that do not reflect or embody a step in the registration or the voting process. Section 1974 only requires the retention of documentation that results in, or which reflects, an act of registering to vote or voting, or a step in the vote tabulation and election certification process.

Documentation generated in the course of elections held *solely* for local or state candidates, or bond issues, initiatives, referenda and the like, is not covered by Section 1974 and may be disposed of within the usually shorter time periods provided under state election laws. However, if there is a federal candidate on the ballot in the election, the 22-month federal retention requirement applies.

■ Section 1974 interfaces with the NVRA

Finally, the retention requirements of Section 1974 interface significantly with somewhat similar retention requirements contained in the NVRA, 42 U.S.C. § 1973gg-6(i).

The differences between these two provisions are threefold:

First, Section 1974 applies to all records generated by the election process, while Section 1973gg-6(i) applies only to registration records generated under the terms of the NVRA.

Second, Section 1974 requires only that records subject to its terms be retained intact for the requisite 22-month period, while Section 1973gg-6(i) requires that registration records be both retained and—with certain specifically noted exceptions—be made available to the public for inspection for 24 months.

Third, violations of Section 1974 by election administrators are subject to criminal sanctions, while violations of Section 1973gg-6(i) are subject only to noncriminal remedies.

■ Conclusion

The main rule of Section 1974 warrants repeating:

This statute does not require that state or local election officials or election procedures generate any specific type or classification of election record. However, if a record is generated, Section 1974 comes into play and requires that the record be retained for 22 months if it falls into one or more of the grouping presented above.

Compliance with these document retention laws undoubtedly can present administrative challenges for election executives. However, the American democracy depends on the integrity of its voting processes. The federal document retention law advances that objective by assuring that physical evidence needed to evaluate and prove defects in the electoral process is available to election executives, investigators, prosecutors and courts. Thus, the quick answer to whatever administrative challenge compliance with these laws may in the short term place on election executives is that democracy does not come cheaply.

The goal of this paper has been to make that task easier by providing guidance with respect to many of the important questions that have been presented to me over the past several years by my colleagues in the election administration community.

Undoubtedly, I have not been able to answer every question that might arise concerning this subject in this brief piece. That would have been impossible to do. Moreover, as new technologies are increasingly developed and brought to bear on the election administrative process, new types of "election records" will invariably be "born," and additional questions will continue to arise concerning the application of these election document retention laws to specific types of records produced by the voting process.

It is not possible for me to answer all of these questions individually. Thus, future requests for formal answers to questions concerning the application of Section 1974 should be directed to the Clearinghouse on Election Administration, Federal Election Commission. The Clearinghouse, in turn, will coordinate with me the task of providing additional public guidance to the election administration community concerning any significant document retention issues that may remain unresolved.

N128W12795 Highland Road
Germantown, WI 53022
March 1, 2011

Dear Sir/Madam:

As the Staff of the Government Accountability Board has no doubt made you aware, the GAB was successful in convincing the Wisconsin legislature to change WI Stats. 7.23(1)(g) with the passage of AB-464 which became law on June 1, 2010.

Based on the current language of WI Stats. 7.23(1)(g) which reads:

Detachable recording units and compartments for use with tabulating equipment for an electronic voting system may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates. The requirement to transfer data does not apply to units or compartments for use with tabulating equipment for an electronic voting system that was approved for use prior to January 1, 2009, and that is not used in a federal election.

I request the following electronic election records under Wisconsin's open records law (WI Stats. 19.31-19.39):

- A. I request a copy of the contents of the removable memory card used by the optical/infrared scanner used within Ward 1 of your municipality during the primary election held on February 15, 2011.
- B. I request a copy of the contents of the removable memory card used by the optical/infrared scanner used to process/tally absent ballots during the primary election held on February 15, 2011 but limited to the removable memory card of that machine which processed one or more absentee ballots cast by electors of Ward 1 of your municipality.
- C. I request a copy of the contents of the removable memory card used disability device which was located in the polling location containing ward 1 of your municipality primary election held on February 15,

Entanglement – Once a record has been requested the requested may not be disposed of until the open record request has been disposed of; included the completion of any court challenges and/or appeals.

Severability – The above open requests are separate and severable and are only including in this single correspondence in order to ease the administration of these requests and the thematic similarity among the requests. It is expected any delay in the production of records for one request will not impair or delay the production of records for another request.

Denial of Request – As required by Wisconsin's open records law as codified in §19, any denial, in whole or in part, of one or more of the public records requests above must state in writing and with specificity as to the reasons and statutory authority for denying the request. For the purposes of this requirement, an email response will be considered a written response.

Redaction – A redaction is a denial in part of requested record. There shall be a log which states in writing and with specificity to the reasons and statutory authority each redaction.

Duplication – If a single record satisfies one or more of the above requests, then only one copy of the record needs to be produced provide said record is accompanied by a notation as to which, multiple requests are satisfied by the record.

Promptness – The records requested above shall be provided "as soon as practicable" as required by Wisconsin statute.

Since the requested election records are electronic records, I expect the copies or backups provided to me pursuant to these open records requests to also be in electronic form and to be true and faithfully copies of the contents of the removable memory cards covered by the above requests.

Please contact me at your earliest convenience when these electronic records can be provided to me. If you have an question regarding these 3 open records request you may contact me:

By email at: jww-ei@WashburnResearch.org

By Telephone: 414-375-5777

In Liberty,

John Washburn

Washburn, John

From: John Washburn [john@washburnresearch.org]
Sent: Thursday, April 07, 2011 5:20 AM
To: 'wendy.christensen@goracine.org'
Subject: Request for 2011-04-05 Election Records

N128W12795 Highland Road
Germantown, WI 53022
April 7, 2011

Dear City Clerk Johnson-Martin:

Under Wisconsin state statutes WI Stats. 19.31-19.39 I hereby make the following requests for records.

- A. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 9:15 pm on April 5, 2011) used by the voting system which processed ballots of electors from Ward 34 of the City of Racine who voted in-person during the April 5, 2011 non-partisan general election. I believe this was the Eagle w/ modem system from Command Central.
- B. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 9:15 pm on April 5, 2011) used by the disability device located in the polling location in which Ward 34 of the City of Racine which was located as was made available for use during the April 5, 2011 non-partisan general election. I believe this was the SEQ-AVC Edge II 5.0.24 system from Command Central.

The above are open records requests for certain electronic election records. In the open records requests above I have referenced the *removable memory card*. It is to be understood the term *removable memory card* is a generic term and refers to memory prom packs, flash cards, PCMCIA cards, detachable recording units or any other term used in the manual(s) of an electronic voting system to describe removable components containing electronic data.

The only open records questions before you as a municipal clerk are:

- 1) Is the requested item a record?
- 2) Are you the legal custodian of the record? If not, please pass this request on to the legal custodian. Your legal obligation under WI open records law is fulfilled.
- 3) Does the requested record exist? If not, then please notify me. Informing me that a requested election record does not exist fulfills your legal obligation under WI open records law.
- 4) Is the requested record completely and wholly exempt from disclosure? If so, then in writing and with specificity please notify me why the record is exempt. Telling me that the record is exempt from disclosure and why it is exempt fulfills your obligation under WI open records law unless the exemption claim is appealed.
- 5) Is the requested record completely and wholly subject to disclosure? If so, then release the record (or a copy thereof) to me. Please note that charges may not exceed the actual, necessary, and direct cost of reproduction or transcription of the record. Releasing the record(s) to me fulfills your obligation under WI open records law.
- 6) Is the requested record a mixture of public and exempt information? If so, then please separate the public information from the exempt information at no expense to me. Such separation of information is an integral part of the routine duties of an official of a Wisconsin governmental body. Once the public information is separated, please release the public portions of the record to me and provide me with a detailed and specific explanation as to why the exempted materials were withheld. Providing both of these documents [the public information and the reason(s) for the exemption(s)] fulfills your legal obligation under WI open records law unless the exemption claim is appealed.

Since many municipal clerks transfer physical custody of records to the county clerk, I have taken the liberty of sending this request to the Racine County clerk, Wendy M Christensen.

Severability – The above open requests are separate and severable. The several requests are only included in this single correspondence for the ease of administration and because of the thematic similarity among the requests. It is expected that any delay in the production of records for one request will not impair or delay the production of records for another request. Moreover the production of the records within each request is severable. It is expected that any delay in the production of one or more records within a single request will not impair or delay the production of the remainder of the records for the request.

Denial of Request – As required by Wisconsin's open records law as codified in §19, any denial, in whole or in part, of one or more of the public records requests above must state in writing and with specificity as to the reasons and statutory authority for denying the request. For the purposes of this requirement, an email response will be considered a written response.

Redaction – A redaction is a denial in part of requested record. There shall be a log which states in writing and with specificity as to the reasons and statutory authority for each redaction, if any.

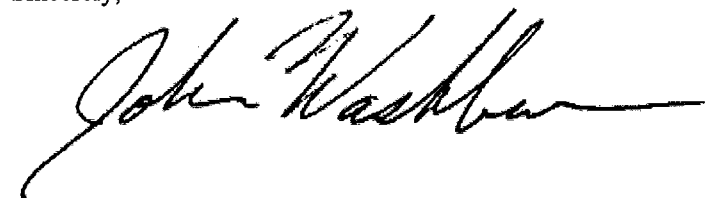
Duplication – If a single record satisfies one or more of the above requests, then only one copy of the record needs to be produced, provided said record is accompanied by a notation as to which multiple requests are satisfied by the record.

Promptness – The records requested above shall be provided “as soon as practicable” as required by Wisconsin statute.

Cost – WI Stats. §19.35 (3)(e) provides that any fees associated with an open records request may be waived if disclosure of the requested information is in the public interest. I assert disclosure of the above requested records is in the public interest. If it is decided that the public interest is not served, then please commit to writing and with specificity the reason why disclosure of the above requested records is not in the public interest. If it is asserted that disclosure is not in the public interest, then WI Stats. 19.35(3) states that such fees “*may not exceed the actual, necessary and direct cost of reproduction and transcription of the record(s)*”. If the actual, necessary and direct costs of reproduction and/or transcription of the record(s) exceed \$50, then please provide an itemized and written description of the actual, necessary and direct cost of reproduction of the record(s).

If you have any questions, regarding this request you may contact me at 414-375-5777, at jww-ei@WashburnResearch.org, or at my Germantown address above

Sincerely,



John Washburn

Cc: Racine County clerk, Wendy M Christensen
wendy.christensen@goracine.org

Email Addresses Used:

- janice.johnson-martin@cityofracine.org
- wendy.christensen@goracine.org

N128W12795 Highland Road
Germantown, WI 53022
March 4, 2011

Reid Magney
Public Information Officer
Government Accountability Board

Dear Mr. Magney;

I would like to make some open records requests of the Government Accountability Board.

On April 12, 2010 both Executive Director, Kevin Kennedy, and staff Counsel, Shane Falk, appeared before the Labor, Elections And Urban Affairs committee, chaired by Senator Spencer Coggs, regarding SB 435. Based on those appearances I make the following open records requests:

- A. The written statement and any other documents submitted by Kevin Kennedy to the Labor, Elections And Urban Affairs committee in connection to his appearance before the committee on April 12, 2010.
- B. The written statement and any other documents submitted by Shane Falk to the Labor, Elections And Urban Affairs committee in connection to his appearance before the committee on April 12, 2010.
- C. Any emails, faxes, or other correspondences sent from the Offices of the GAB to the office of any senator who is a member of the Labor, Elections and Urban Affairs committee regarding either SB-435 or AB-646. This request is limited to days of December 21, 2009 to April 23, 2010; inclusive.

On February 2, 2010 both Executive Director, Kevin Kennedy, and staff Counsel, Shane Falk, appeared before the Elections and Campaign Reform committee, chaired by Assemblyman Jeff Stone, regarding SB 646. Based on those appearances I make the following open records requests:

- D. The written statement and any other documents submitted by Kevin Kennedy to the Elections and Campaign Reform committee in connection to his appearance before the committee on April 12, 2010.
- E. The written statement and any other documents submitted by Shane Falk to the Elections and Campaign Reform committee in connection to his appearance before the committee on April 12, 2010.
- F. Any emails, faxes, or other correspondences sent from the Offices of the GAB to the office of any of any assembly person who is a member of the Elections and Campaign Reform committee regarding either SB-435 or AB-646. This request is limited to days of December 21, 2009 to April 23, 2010; inclusive.

During the April 12, 2010 appearance before the Labor, Elections And Urban Affairs committee, Executive Director Kennedy stated that the staff of the staff of the GAB predecessor board, the State Election Board, had investigated and confirmed that there are no data on present on a removable memory card which are not also present either:

- On the paper tape generated by the voting equipment at the end of the day, or
- Is part of the data uploaded on election night from the removable memory card to the Election Management System (e.g UNITY, WinEDS, or GEMS) found on the central server.

Based on this representation to Senator Coggs, I make the following open records request:

- G. Any document, faxes, emails, notes, reports or other records generated by the investigation of the during the certification process of the several systems which either support or refute this representation by Mr. Kennedy. This request is limited to those voting systems certified for use in the state of Wisconsin where the certification date is on or after January 1, 2005.
- H. Any document, faxes, emails, notes, reports or other records between the office of the GAB and any office of the DOJ or any sub agency thereof which discuss the record retention requirements of Title 42 > Chapter 20 > Subchapter li > § 1974 as that federal statute or any federal regulation related to § 1974 address the contents of removable memory cards.

During the April 12, 2010 appearance before the Labor, Elections and Urban Affairs committee, Staff Counsel Shane Falk stated that the voting machine vendors have absolutely not proprietary interest in the contents of a removable memory card used by a voting system in the state of Wisconsin. Staff Counsel Shane Falk went further and stated to Senator Coggs that since election records such as the contents of a removable memory card are by statute the sole property of local election officials, Mr. Washburn's claims to the contrary before the Labor, Elections And Urban Affairs committee on April 12, 2010 frivolous and untrue. I had testified that the contents of removable memory cards were not open records because the contents are the trade secreted property of the vendors and vigorously exempted from open records law passed on the claim or proprietary interest. Based on Attorney Falk's discovery of WI Stats. 7.24 which vests title of all election materials records solely and completely with election officials, I make the following open records request:

- I. I would like a copy of the thumb drive backup of the memory card contents made during the certification testing of Unity Election Management Suite, software version 3.2.0.0, approved under EAC Certificate, ESSUnity3200 system in order to confirm or deny the system's compliance with the backup requirements of WI Stats. 7.23(1)(g). This ES&S system was approved by the GAB on December 17, 2009.

Severability – The above open requests are separate and severable and are only including in this single correspondence in order to ease the administration of these requests and the thematic similarity among the requests. It is expected any delay in the production of records for one request will not impair or delay the production of records for another request.

Denial of Request – As required by Wisconsin's open records law as codified in §19, any denial, in whole or in part, of one or more of the public records requests above must state in writing and with specificity as to the reasons and statutory authority for denying the request. For the purposes of this requirement, an email response will be considered a written response.

Redaction – A redaction is a denial in part of requested record. There shall be a log which states in writing and with specificity to the reasons and statutory authority each redaction.

Duplication – If a single record satisfies one or more of the above requests, then only one copy of the record needs to be produced provide said record is accompanied by a notation as to which, multiple requests are satisfied by the record.

Promptness – The records requested above shall be provided "as soon as practicable" as required by Wisconsin statute. Thank you for your time on this matter.

Costs – The cost for this request may not exceed the "actual, necessary and direct cost of reproduction and transcription."

In Liberty,
John Washburn

N128W12795 Highland Road
Germantown, WI 53022
March 14, 2011

Dear Municipal Clerk:

Under Wisconsin state statutes WI Stats. 19.31-19.39 I hereby make the following requests for records.

- A. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 8:15 pm on September 14, 2010) used by the voting system which processed ballots of electors from Ward 1 of your municipality who voted in person during the September 14, 2010 partisan primary election.
- B. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 8:15 pm on September 14, 2010) used by the voting system which processed the absentee ballot(s) of one or more electors from Ward 1 of your municipality who voted absentee during the September 14, 2010 partisan primary election.
- C. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 8:15 pm on September 14, 2010) used by the disability device located in the polling location in which Ward 1 of your municipality is located and available for use during the September 14, 2010 partisan primary election.
- D. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 8:15 pm on November 2, 2010) used by the voting system which processed ballots of electors from Ward 1 of your municipality who voted in person during the November 2, 2010 partisan general election.
- E. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 8:15 pm on November 2, 2010) used by the voting system which processed the absentee ballot(s) of one or more electors from Ward 1 of your municipality who voted absentee during the November 2, 2010 partisan general election.
- F. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 8:15 pm on November 2, 2010) used by the disability device located in the polling location in which Ward 1 of your municipality is located and available for use during the November 2, 2010 partisan general election.

The above are open records requests for certain electronic election records. In the open records requests above I have referenced the *removable memory card*. It is to be understood the term *removable memory card* is a generic term and refers to memory prom packs, flash cards, PCMICA cards, detachable recording units or any other term used in the manual(s) of an electronic voting system to describe removable components containing electronic data.

The only open records questions before you as a municipal clerk are:

- 1) Are you the legal custodian of the record? If not, please pass this request on to the legal custodian. Your legal obligation under WI open records law is fulfilled.
- 2) Does the requested record exist? If not, then please notify me. Informing me that a requested election record does not exist fulfills your legal obligation under WI open records law.
- 3) Is the requested record completely and wholly exempt from disclosure? If so, then in writing and with specificity please notify me why the record is exempt. Telling me that the record is exempt from disclosure and why it is exempt fulfills your obligation under WI open records law unless the exemption claim is appealed.
- 4) Is the requested record completely and wholly subject to disclosure? If so, then release the record (or a copy thereof) to me. Please note that charges may not exceed the actual, necessary, and direct cost of reproduction or transcription of the record. Releasing the record(s) to me fulfills your obligation under WI open records law.
- 5) Is the requested record a mixture of public and exempt information? If so, then please separate the public information from the exempt information at no expense to me. Such separation of information is an integral part of the routine duties of an official of a Wisconsin governmental body. Once the public information is separated, please release the public portions of the record to me and provide me with a detailed and specific explanation as to why the exempted materials were withheld. Providing both of these documents [the public information and the

OR Request: Page 1 of 2

reason(s) for the exemption(s)] fulfills your legal obligation under WI open records law unless the exemption claim is appealed.

Severability – The above open requests are separate and severable. The several requests are only included in this single correspondence for the ease of administration and because of the thematic similarity among the requests. It is expected that any delay in the production of records for one request will not impair or delay the production of records for another request. Moreover the production of the records within each request is severable. It is expected that any delay in the production of one or more records within a single request will not impair or delay the production of the remainder of the records for the request.

Denial of Request – As required by Wisconsin's open records law as codified in §19, any denial, in whole or in part, of one or more of the public records requests above must state in writing and with specificity as to the reasons and statutory authority for denying the request. For the purposes of this requirement, an email response will be considered a written response.

Redaction – A redaction is a denial in part of requested record. There shall be a log which states in writing and with specificity as to the reasons and statutory authority for each redaction, if any.

Duplication – If a single record satisfies one or more of the above requests, then only one copy of the record needs to be produced, provided said record is accompanied by a notation as to which multiple requests are satisfied by the record.

Promptness – The records requested above shall be provided “as soon as practicable” as required by Wisconsin statute.

Cost – WI Stats. §19.35 (3)(e) provides that any fees associated with an open records request may be waived if disclosure of the requested information is in the public interest. I assert disclosure of the above requested records is in the public interest. If it is decided that the public interest is not served, then please commit to writing and with specificity the reason why disclosure of the above requested records is not in the public interest. If it is asserted that disclosure is not in the public interest, then WI Stats. 19.35(3) states that such fees “*may not exceed the actual, necessary and direct cost of reproduction and transcription of the record(s)*”. If the actual, necessary and direct costs of reproduction and/or transcription of the record(s) exceed \$50, then please provide an itemized and written description of the actual, necessary and direct cost of reproduction of the record(s).

If you have any questions, regarding this request you may contact me at 414-375-5777, at jww-ei@WashburnResearch.org, or at my Germantown address above

Sincerely,

A handwritten signature in black ink that reads "John Washburn". The signature is fluid and cursive, with a long horizontal stroke at the end.

John Washburn

Election Law Post Script

In my March 1, 2011 open records request, I included reasons why I requested certain electronic election records from the February 15, 2011 primary election. Wisconsin's open records law makes the inclusion the reasons for a request completely optional, and some recipients of my request thought the election law I cited [WI Stats. 7.23(1)(g)] had some bearing on or connection with the release or exemption of the requested election records.

It did not.

With my current request, I want to make it clear that my motivation for requesting certain electronic election records from the September 2010 election and the November 2010 election in the above open records requests is separate, distinct, and independent of those open records requests. The open records requests are sufficient without providing any rationale for the request. However, I choose to express my rationale, which is simply an attempt to determine whether election law is being followed.

Are the requested elections records retained for 22 months as required by both state law [WI Stats. 7.23(1)(g)] and federal law [Title 42 > Chapter 20 > Subchapter II > § 1974]?

Until such time as there is a state agency exercising responsibility for the administration of chs. 5 to 12 and other laws relating to elections, it falls to private citizens to monitor the administration of elections (such as verifying record retention) within the State of Wisconsin. But, that such a state agency does not yet exist, again, is separate, distinct, and independent of the open records questions before you.

This post script is intended to provide background and legal references regarding two specific issues related to my records request:

- 1) The requested records must, by state and federal law, be preserved for 22 months after the respective elections to which they apply.
- 2) Your voting system must, by state law, be capable of generating copies of the requested records.

1) The requested records must, by state and federal law, be preserved for 22 months after the respective elections to which they apply.

1a) State Law Requires Retention of the Requested Records for 22 Months. The exact state statute which requires the requested election records be created and retained for a minimum of 22 months is WI Stats. 7.23(1)(g) which reads [emphasis mine]:

Detachable recording units and compartments for use with tabulating equipment for an electronic voting system may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium

which may be erased or destroyed 22 months after the election to which the data relates. The requirement to transfer data does not apply to units or compartments for use with tabulating equipment for an electronic voting system that was approved for use prior to January 1, 2009, and that is not used in a federal election.

Note that the last sentence, which provides some exemptions from the statute, was added during the summer of 2010 with the enactment of 2009 Act 397. This additional sentence does not affect the 20 year old requirement to retain the requested election records for federal elections.

- The Wisconsin legislative bureau analysis of 2009 Act 397 states [emphasis mine]:
The Act provides that the requirement to transfer data does not apply to units or compartments for use with tabulating equipment for an electronic voting system that was approved for use prior to January 1, 2009, and that is not used in a federal election.
- The GAB has stated that the requirement to retain these records for federal election remains unchanged with the passage of 2009 Act 397. The GAB memo of June 9, 2010 sent to all clerks plainly states this.
- The GAB has altered the Destruction of Materials chart to expressly note that the data retention of the requested election records is required by state statute. In particular the Destruction of Materials chart reads [emphasis mine]:
*For any election at which a federal office appears on the ballot, before units may be cleared or erased, municipalities **must retain** all electronic data for 22 months.*

1b) Federal Law Requires Retention of the Requested Records for 22 Months. The federal record retention statute is Title 42 > Chapter 20 > Subchapter II > § 1974 and reads [emphasis mine]:

*Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, **all records and papers which come into his possession** relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. **Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.***

Please notice that the federal statute includes all non-paper election records such as the electronic records requested by the open records request above. It requires federal election records be retained for a minimum of 22 months regardless of the medium. Note also that the law itself declares that the retention of election records is not to be taken lightly. It includes severe penalties for non-compliance.

2) Your voting system must, by state law, be capable of generating copies of the requested records.

2a). The electronic election records for each federal election must be transferred to an electronic medium for retention.

From 1995 with the State Election Board to the present with the GAB, the Boards have consistently and persistently informed the clerks of the statutory requirement that the contents of a removable memory card must be transferred to “a disk or other recording medium” and then retained for 22 months.

The GAB and its predecessor board, the SEB, have clearly communicated the 22 month retention period in each of the following documents:

1. The record retention schedule from 1995.
2. Pages 123-127 of the 2007 Election Administration Manual for Wisconsin Municipal Clerks
3. As part of the December 18, 2008 memo sent to all clerks in the state.
4. The GAB staff informed the GAB Board on May 10, 2010 that the record retention policy of 22 months for federal elections was unaffected by SB435 (SB435 became 2009 Act 397). The exact words of the GAB staff to the judges of the GAB were:
Municipalities using electronic voting equipment approved before that date must retain the electronic data for 14 days after a primary and 21 days after a general election involving only state and local offices or referenda (February and April), but must still retain the data for 22 months following any federal election. This legislation would significantly clarify the obligation of municipalities to retain electronic election records, an issue which has required much Board and staff attention since the 2008 General Election. It also provides a significant cost savings for municipalities that continue to use electronic voting systems approved prior to January 1, 2009
5. As mentioned earlier, the GAB sent a new Destruction of Materials chart which expressly states data retention of the requested election records for 22 months is required by state statute.
6. As mentioned before, the GAB sent the statewide memo of June 9, 2010 to all clerks to give them notice of the 22 month record retention policy.

The six items above are a much abbreviated list and the list of 6 is by no means exhaustive. Even this abbreviated list though illustrates that the 22 month record retention requirement has been communicated to clerks of the state for more than 15 years.

2b) Wisconsin law supports the aforementioned method of retention by requiring that electronic voting systems be capable of generating the electronic records that must be retained.

Any voting system used to aid in an administration of an election in Wisconsin by state law [WI Stats. 5.91(10) and WI Stats. 7.23(1)(g)] must be able to transfer the contents of removable memory “to a disk or other recording medium” in order that those records can be retained for 22 months. This has been one of the minimum statutory requirements of voting systems since 1989.

The Wisconsin state legislature, with WI Stats. 5.91(10), requires all electronic voting systems used in the state be fit for use. This requirement is regardless of whether the equipment has been correctly or incorrectly approved by the GAB or correctly or incorrectly approved by a past board. WI Stats 5.91 reference the 18 requirements and reads [emphasis mine]:

No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board. The board may revoke its approval of any ballot, device, equipment or materials at any time for cause. No such ballot, voting

Election Law Post Script, which is Separate, Distinct, and Independent from the Open Records Requests on Pages 1 and 2.

device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

The requirements of WI Stats 5.91 are the ***minimum*** requirements from the Wisconsin State Legislature of what can be approved for use in the State of Wisconsin. No State Elections Board (or the GAB) is ***allowed*** to approve or is allowed to condone the use of any electronic voting system which fails to meet the 18 requirements of WI Stats 5.91. The fact that a past board did or did not err in approving a system for use is independent of the question of whether that system can be used in a Wisconsin Election. If a system fails one or more of the 18 requirements of WI Stats 5.91, then that system cannot be used in the State of Wisconsin for a public election.

This requirement to adhere to the requirements of WI Stats 5.91 is so fundamental to the approval process of electronic voting systems that in June 2000 the State Election Boards codified into administrative rule EIBd 7 (and later in GAB 7) what minimum necessary functions a voting system ***must*** possess in order to be fit for use under WI Stats. 5.91(10). Among the minimum functionality which all voting systems must possess and for which state election boards (both the GAB and its predecessor, the SEB) have expressly tested is the following requirement from EIBd 7.03(3) [currently GAB 7.03(3)] which reads:

- *The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. 7.23, Stats.*

In Summary

The legality of using electronic voting systems which do not meet the minimum requirements of WI Stats. 5.91(10) in a Wisconsin election can be summarized thus:

- If your election system does not allow you to meet the backup and record retention requirements of a state federal election law, then that voting system is un-merchantable because that voting system is unfit for the ordinary and customary use for which it was purchased.
- For any voting system which is “*unfit for use*”, WI Stats. 5.91(10) clearly prohibits the use of such a voting system in any Wisconsin election even if the un-merchantable voting system was certified improperly by the GAB or its predecessor board, the State Elections Board.

It is my intention to attend the GAB meeting of March 22, 2011 and press for the GAB to enforce the requirement under state law to retain federal election records for 22 months and to decertify under GAB 7.03(1) any electronic voting system used in the state where the voting system is in violation of GAB 7.03(3). Once the GAB accepts responsibility for enforcing the record retention requirement, it will no longer fall to ordinary citizens such as myself to monitor compliance.

OFFICE OF KEWAUNEE COUNTY CLERK

Linda J. Teske, County Clerk

Administration Center - 810 Lincoln Street - Kewaunee, WI 54216
(920) 388-7133 Fax (920) 388-7195

Bev Dolski, Payroll Technician/Deputy

Debbie Miller, Account Clerk

Janine Bowers, Account Clerk III

March 30, 2011

Mr. John Washburn
N128W12795 Highland Road
Germantown, WI 53022

Dear Mr. Washburn:

I am responding to your open records request on behalf of the City of Algoma, Ward 1 for contents of a removable memory card for processing ballots of electors, absentee ballots and disability device for the September and November 2010 Elections. Thomas Romdenne, City Administrator, forwarded your request to me.

Kewaunee County has a central count system. At the end of an election night, all election materials are turned over to the County Clerk's Office for tabulating and storage.

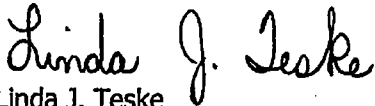
Kewaunee County has a "chip" that has been programmed by Election Systems and Software, it was programmed for the combination of all 7 wards in the City of Algoma, that is placed inside the central count unit.

After the ballots are counted by the scanner, a diskette is produced saving the results from that municipality. We have fourteen municipalities, so there are fourteen diskettes that are saved on election night.

In your request, you are asking for Ward 1, City of Algoma. The particular elections you are requesting, September 14, 2010 and November 2, 2010, the votes were not broken out by wards. The results would be a grand total of all voters for the City of Algoma, which has seven wards.

Because the results are combined into one total, Kewaunee County cannot fulfill your request.

Sincerely,


Linda J. Teske
Kewaunee County Clerk

Washburn, John

From: Barb Goeckner [bgoeckner@vil.river-hills.wi.us]
Sent: Tuesday, April 12, 2011 4:31 PM
To: john@washburnresearch.org
Subject: RE: Request for 2011-04-05 Election Records
Attachments: Dominion Release letter - open records request.pdf

Mr. Washburn,

I am in receipt of your open records request for the memory data from our election voting equipment. As stated, we have one Sequoia Edge HAVA compliant machine and one Optech Eagle system. The costs for the data are \$200 for the Edge per results cartridge downloaded electronically to a CD and \$250 for the Optech Eagle per memory pack downloaded to a hard copy. These fees are as quoted by our election equipment programmers, Command Central. At this time, I would estimate an additional fee of approximately \$10 for postage and processing. Therefore, we would require you to send us a check for \$460.00 in advance of us procuring the data for you. Also, because there is still a possibility of a statewide recount for this election, I am unable to proceed with your public records request until that recount is completed and there is no further requirement for use of the memory packs or results cartridges for those purposes. Or until such time has passed that a recount is no longer possible.

Attached you will find a copy of the release letter from Dominion Voting Systems regarding their proprietary rights for the voting machine information, which you would be required to uphold.

If you still wish to obtain this information in your request, please forward a check for \$460.00 payable to the Village of River Hills 7650 N Pheasant Lane, River Hills WI 53217. Once the aforementioned recount timing has lapsed and your check has cleared the bank I will proceed with securing your requested information.

Should you have any questions, please feel free to contact me.

Barbara K.D. Goeckner WCMC/CMC/CMTW
Village Clerk/Treasurer, Village of River Hills
7650 N Pheasant Lane, River Hills, WI 53217
PH 414-352-8213 FAX 414-247-2308
Population 1,641

From: John Washburn [mailto:john@washburnresearch.org]
Sent: Thursday, April 07, 2011 5:20 AM
To: bgoeckner@vil.river-hills.wi.us
Subject: Request for 2011-04-05 Election Records

N128W12795 Highland Road
Germantown, WI 53022
April 7, 2011

Dear Village Clerk Goeckner:

Under Wisconsin state statutes WI Stats. 19.31-19.39 I hereby make the following requests for records.

- A. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 9:15 pm on April 5, 2011) used by the voting system which processed ballots of electors from Ward 3 of the Village of River Hills who voted in-person during the April 5, 2011 non-partisan general election. I believe this was the Eagle system from ES&S.
- B. I request a copy of the entire contents of the removable memory card (as those contents existed on or after 9:15 pm on April 5, 2011) used by the disability device located in the polling location in which Ward 3 of the Village of River Hills which was located as was made available for use during the April 5, 2011 non-partisan general election. I believe this was the SEQ-AVC Edge II 5.0.24 system from ES&S.

The above are open records requests for certain electronic election records. In the open records requests above I have referenced the *removable memory card*. It is to be understood the term *removable memory card* is a generic term and refers to memory prom packs, flash cards, PCMICA cards, detachable recording units or any other term used in the manual(s) of an electronic voting system to describe removable components containing electronic data.

The only open records questions before you as a municipal clerk are:

- 1) Is the requested item a record?
- 2) Are you the legal custodian of the record? If not, please pass this request on to the legal custodian. Your legal obligation under WI open records law is fulfilled.
- 3) Does the requested record exist? If not, then please notify me. Informing me that a requested election record does not exist fulfills your legal obligation under WI open records law.
- 4) Is the requested record completely and wholly exempt from disclosure? If so, then in writing and with specificity please notify me why the record is exempt. Telling me that the record is exempt from disclosure and why it is exempt fulfills your obligation under WI open records law unless the exemption claim is appealed.
- 5) Is the requested record completely and wholly subject to disclosure? If so, then release the record (or a copy thereof) to me. Please note that charges may not exceed the actual, necessary, and direct cost of reproduction or transcription of the record. Releasing the record(s) to me fulfills your obligation under WI open records law.
- 6) Is the requested record a mixture of public and exempt information? If so, then please separate the public information from the exempt information at no expense to me. Such separation of information is an integral part of the routine duties of an official of a Wisconsin governmental body. Once the public information is separated, please release the public portions of the record to me and provide me with a detailed and specific explanation as to why the exempted materials were withheld. Providing both of these documents [the public information and the reason(s) for the exemption(s)] fulfills your legal obligation under WI open records law unless the exemption claim is appealed.

Since many municipal clerks transfer physical custody of records to the county clerk, I have taken the liberty of sending this request to the Milwaukee County clerk, Lisa Catlin Weiner.

Severability – The above open requests are separate and severable. The several requests are only included in this single correspondence for the ease of administration and because of the thematic similarity among the requests. It is expected that any delay in the production of records for one request will not impair or delay the production of records for another request. Moreover the production of the records within each request is severable. It is expected that any delay in the production of one or more records within a single request will not impair or delay the production of the remainder of the records for the request.

Denial of Request – As required by Wisconsin’s open records law as codified in §19, any denial, in whole or in part, of one or more of the public records requests above must state in writing and with specificity as to the reasons and statutory authority for denying the request. For the purposes of this requirement, an email response will be considered a written response.

Redaction – A redaction is a denial in part of requested record. There shall be a log which states in writing and with specificity as to the reasons and statutory authority for each redaction, if any.

Duplication – If a single record satisfies one or more of the above requests, then only one copy of the record needs to be produced, provided said record is accompanied by a notation as to which multiple requests are satisfied by the record.

Promptness – The records requested above shall be provided “as soon as practicable” as required by Wisconsin statute.

Cost – WI Stats. §19.35 (3)(e) provides that any fees associated with an open records request may be waived if disclosure of the requested information is in the public interest. I assert disclosure of the above requested records is in the public interest. If it is decided that the public interest is not served, then please commit to writing and with specificity the reason why disclosure of the above requested records is not in the public interest. If it is asserted that disclosure is not in the public interest, then WI Stats. 19.35(3) states that such fees “*may not exceed the actual, necessary and direct cost of reproduction and transcription of the record(s)*”. If the actual, necessary and direct costs of reproduction and/or transcription of the record(s) exceed \$50, then please provide an itemized and written description of the actual, necessary and direct cost of reproduction of the record(s).

If you have any questions, regarding this request you may contact me at 414-375-5777, at jww-ei@WashburnResearch.org, or at my Germantown address above

Sincerely,

A handwritten signature in black ink that reads "John Washburn". The signature is fluid and cursive, with a long horizontal stroke at the end.

John Washburn

Cc: Milwaukee County clerk, Lisa Catlin Weiner
lweiner@milwcnty.com

Email Addresses Used:

- bgoeckner@vil.river-hills.wi.us
- lweiner@milwcnty.com

State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3rd Floor
Post Office Box 7984
Madison, WI 53707-7984
Voice (608) 266-8005
Fax (608) 267-0500
E-mail: gab@wisconsin.gov
<http://gab.wi.gov>



JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

via

Nathaniel E. Robinson
Elections Division Administrator

Prepared and Presented by:
Michael Haas, Staff Counsel
Ross Hein, Elections Specialist

SUBJECT: Update Regarding Supreme Court Justice Statewide Recount

As the Board is aware, the original county canvass reports for the Spring Election reflected a margin of 7,316 votes in favor of Supreme Court Justice David Prosser over JoAnne Kloppenburg, out of approximately 1.5 million votes cast. On April 20, 2011, the Kloppenburg campaign filed a recount petition with the Board, requesting a recount of all wards and municipalities in the State. The last statewide recount occurred after a statewide constitutional referendum in 1989. To the Board's knowledge, the only other statewide recount involving candidates occurred in 1858.

Because the vote margin was 0.49 percent, no filing fee was required for the recount, and therefore the majority of the cost of the recount has been absorbed by counties, with the Board and municipalities also incurring opportunity costs of staff time and preparation of materials.

The statewide recount presented unique challenges to Board staff and County Boards of Canvassers given the sheer number of ballots to be recounted, the need to implement uniform procedures, and the lack of a sufficient number of memory devices to conduct the recount in counties using the Optech Eagle tabulating equipment. This memorandum summarizes the main issues which arose and the activities of Board staff and local election officials in conducting the recount.

A. Optech Eagle Litigation

Based upon feedback from county clerks and equipment vendors, Board staff quickly determined that there would be insufficient memory devices to operate the Optech Eagle tabulating equipment in a statewide recount, while preserving electronic election records from the Spring Election as required pursuant to §7.23, Stats. The mandate of §7.23 conflicted with the requirement that ballots be recounted in the same manner as they were counted in the original canvass, as required under §5.90, Stats.

The Department of Justice initiated litigation on behalf of the Board to seek court relief from the record preservation requirement of §7.23, or to permit a hand recount of ballots in municipalities which completed the original canvass using Optech Eagle tabulating equipment. Staff participated in extensive discussions with legal counsel for the two candidates and DOJ, resulting in Dane County Circuit Court Judge Richard Neiss executing a stipulated order on April 27, 2011. The Order required ballots in Optech Eagle jurisdictions to conduct a hand recount, and is attached to this memorandum. Assistant Attorney General David Rice represented the Board, and Staff Counsel Shane Falk was instrumental in ensuring that the interests of the Board were protected.

B. Implementation of Uniform Procedures

Section 9.01(1), Stats. requires that the Board prescribe standard forms and procedures for use in recounts. Ensuring uniform procedures can be particularly challenging and essential in the case of a statewide recount. The basis of the procedures used in the recount was the G.A.B Recount Manual which had been formally updated and adopted by the Board. To supplement the Manual and address issues specific to the Supreme Court recount, Board staff created the Supreme Court Recount Plan, which was principally drafted by Staff Counsel Shane Falk. A copy of the Plan is attached, along with a copy of the Board's Order to initiate the recount.

On April 25, 2011, Board staff conducted a public telephone conference with all 72 county clerks to outline the procedures to be used during the recount and to answer questions. Board staff who participated in the teleconference included Director and General Counsel Kevin Kennedy, Elections Specialist Ross Hein, and Staff Counsels Shane Falk and Michael Haas. As a result of feedback received from county clerks, Board staff subsequently modified two aspects of the Recount Plan. During the recount process, Ross Hein and Michael Haas served as the primary contacts for county clerks, and other staff members assisted in resolving questions and issues which arose.

C. Recount Webpage and Communications

The G.A.B. created a webpage for the purpose of providing members of the public and Boards of Canvassers accessible information regarding the statewide recount. The webpage provided regular status updates for county clerks as well as a question and answer section to address common inquiries.

To date, Board staff has created and posted twelve separate Status Updates, the first of which was issued on April 8, 2011, in anticipation of a possible recount. The purpose of the Status Updates was to provide Boards of Canvassers uniform guidance in an effort to ensure that

uniform procedures were used statewide, and to supplement the Recount Manual and Supreme Court Recount Plan. Additionally, as the Board responded to common inquiries submitted either by phone or through the Board's dedicated recount email address, Board staff addressed various issues through the Question/Answer page.

The Board required that each county provide a nightly email to report on the daily progress. For each reporting unit completed, the nightly email listed the number of ballots cast, the number of votes for each candidate, and the number of scattering (write-in) votes. Elections Specialist Aaron Frailing and Multimedia Training Officer Christopher Doffing completed the task of posting the unofficial returns for each county, daily at noon and at 6:00 p.m., and for ensuring quality control in the posting of the unofficial results.

D. Certified Recount Results

Upon completion of the recount within a county, the County Clerks reported their official recount returns in the SVRS Canvass Reporting System. Once County Clerks "verified" the election returns for each reporting unit, they sent the Board a signed electronic copy of the "Federal State Certification Report for G.A.B." and delivered the original by mail. Upon receiving the signed electronic certification report, G.A.B. staff "certified" the election returns and posted the ward-by-ward report for each county on the Board's recount webpage. Additionally, Board staff has made available recount minutes for each county on the recount webpage.

Completion Status and Summary

As of the statutory deadline of May 9, 2011, 71 of the 72 County Boards of Canvassers had completed the recount of the county election returns from the April 5, 2011 Spring Election; the only county remaining is Waukesha. On May 9, 2011, Dane County Circuit Court Judge Richard Niess ordered an extension of time for Waukesha County to complete its Supreme Court recount to May 26, 2011. A status conference will be held at 11:30 a.m. Friday, May 13, 2011 to review the progress to date and consider whether the extension should be shortened or maintained. Board staff will continue to work with Waukesha County officials to identify methods to accelerate the recount process without affecting the transparency, accuracy or public's confidence in the recount.

The statewide recount for the office of Supreme Court Justice has been a major undertaking for the Board and local election officials. Board staff appreciates the diligence and dedication of county clerks, canvassing board members, and tabulators, and the many municipal clerks and election inspectors who assisted in the recount. The process was important not only for certifying the results of the election for Supreme Court Justice, but it will also produce an opportunity to review and update Statutes and procedures governing recounts, and to determine points of emphasis for training purposes.

In the Matter of the Recount of Votes
for Wisconsin Supreme Court Justice:

WISCONSIN GOVERNMENT
ACCOUNTABILITY BOARD
212 East Washington Avenue
Madison, Wisconsin 53703,

Petitioner,

v.

Case No. 2011CV1863

Declaratory Judgment: 30701

DAVID PROSSER
57 Golf Course Road, Unit F
Madison, Wisconsin 53704

and

JOANNE KLOPPENBURG
2318 Rowley Avenue
Madison, Wisconsin 53726,

Respondents.

ORDER

The above-entitled case having been filed and having come on for hearing
before the court, the Honorable Richard G. Niess, presiding, on April 21, 2011;
and

The petitioner having appeared by Assistant Attorney General David Rice,
respondent David Prosser having appeared by Attorneys Jim Troupis and Daniel
Kelly, and respondent JoAnne Kloppenburg having appeared by Attorney Susan
Crawford; and

The parties having stipulated that for the recount requested by respondent Kloppenburg, ballots will be re-counted by hand in the municipalities that used the Optech Eagle equipment to tabulate votes on election day, and ballots in the remaining municipalities will be re-counted by the same method that ballots in those municipalities were counted on election day as provided by law; and

The petitioner having agreed that its complaint could be dismissed based upon the stipulation of the parties,

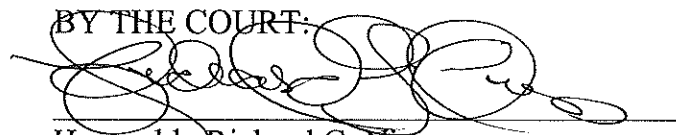
Now Therefore, IT IS ORDERED:

(1) For the recount requested by respondent Kloppenburg, ballots will be re-counted by hand in the municipalities that used the Optech Eagle equipment to tabulate votes on election day, and ballots in the remaining municipalities will be re-counted by the same method that ballots in those municipalities were counted on election day as provided by law.

(2) The petitioner's complaint is dismissed without costs to any party.

Dated at Madison,. Wisconsin, this 25 day of April, 2011.

BY THE COURT:



Honorable Richard G. Niess
Circuit Court Judge

SUPREME COURT RECOUNT PLAN

Introduction:

This document shall be used for the statewide recount of the Office of Wisconsin Supreme Court Justice for the April 5, 2011 Spring Election. This Supreme Court Recount Plan supplements and clarifies certain items of the Government Accountability Board's manual entitled Election Recount Procedures, dated September 2008 (revised May 20, 2009). The Election Recount Procedures manual as supplemented by this Supreme Court Recount Plan shall govern the statewide recount. Where the Supreme Court Recount Plan conflicts with the Election Recount Procedures manual, the Supreme Court Recount Plan controls. The procedures set forth in the Election Recount Procedures manual as modified by the Supreme Court Recount Plan shall assist with ensuring a uniform recount process statewide.

RULES FOR OBSERVERS

Boards of Canvassers shall implement rules for observers as follows:

1. Pursuant to s. 9.01 (1) (b) 11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.
2. Observers and candidates' representatives and assistants shall conform their conduct to the following requirements and the Boards of Canvassers shall exercise its authority to regulate conduct of observers and candidates' representatives and assistants.
 - A. The Boards of Canvassers may limit observers to a designated area. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.
 - B. If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of a Board of Canvassers, threatens the orderly conduct of the count, the Board of Canvassers shall issue a warning and, if the observer does not cease the offending conduct, order the observer's removal
 - C. Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the recount.
 - D. Questions and challenges shall be directed to the member of the Boards of Canvassers designated to receive questions and challenges or objections. Observers may not ask questions of the Boards of Canvassers. Only the designated representative of the candidates may ask questions of or make challenges or objections to the Boards of Canvassers. Candidates may designate serial representatives, but only one at any given time shall be designated to address the Boards of Canvassers.
 - E. Candidates' designated representatives may have assistants monitoring tabulators' activities. These assistants are permitted to ask clarifying questions regarding poll list reconciliation and may request that ballots are set aside for further review during the ballot sorting process. If the assistants desire to make a challenge or objection, the assistants shall bring the matter to the attention of the candidates' respective designated representative that is permitted to ask questions of or make challenges or objections to the Boards of Canvassers.

F. All observers, candidates' representatives and assistants, and volunteers shall sign in before entering the recount room and out before leaving the recount room. Representatives of the candidates and their assistants, as well as the media, shall wear distinguishing name tags.

G. Observers should refrain from engaging in excess conversation or making noise that is distracting to the Boards of Canvassers or tabulators. Excess conversation and noise that is determined by the Boards of Canvassers to be distracting to the process shall result in first a warning to the offender(s) and if another violation occurs, ejection from the recount room.

H. As recount room size dictates, Boards of Canvassers may reasonably and fairly limit the number of observers present.

3. The following items CANNOT be carried into the recount room:
 - Purses
 - Briefcases
 - Coats
 - Pencils or Pens with Black or Blue Ink
4. The Boards of Canvassers and Tabulators are the ONLY people authorized to touch the ballots and elections materials in ANY way.
5. Coffee, water, and other drinks may be in the recount room, but shall NOT be allowed to sit on tables in the ballot counting area or the vicinity of any election or recount materials.
6. Food items in the recount room are allowed, but must not be noisy, shall be disposed of properly, and in no circumstances may food items go beyond the boundary line marked on the recount room floor.
7. Anyone creating a disturbance, failing to follow the above rules, or failing to follow other rules as established by a Board of Canvassers, shall first receive a warning and if another violation occurs, shall be ejected from the recount room.

RECOUNT PROCESS

- I. The G.A.B. manual entitled Election Recount Procedures, dated September 2008 (revised May 20, 2009), and this Supreme Court Recount Plan shall be present in the recount room. The Election Procedures Manual as modified by this Supreme Court Recount Plan shall be the only recount manual and plan used as a references for the statewide recount. Where the Supreme Court Recount Plan conflicts with the Election Recount Procedures manual, the Supreme Court Recount Plan controls.

Boards of Canvassers and candidates' representatives shall provide notice to and consult with the G.A.B. regarding any significant procedural concerns or objections throughout the recount process. Any telephone calls or emails to the Government Accountability Board Help Desk shall be routed to the recount team.

- II. Recount Checklists—Supplies and Materials, Tabulating Equipment and DRE Ballots
 - A. Prior to convening the recount, the County Clerk or designee shall ensure that sufficient supplies and materials are available. See “General Checklist of Supplies and Materials Needed for the Recount,” Election Recount Procedures, Appendix Page 7. See attached.
 - B. Prior to recounting a reporting unit, the County Clerk or designee shall ensure that all the election materials are present and offer a verbal report to the Boards of Canvassers. See “Election Materials from Each Reporting Unit,” Election Recount Procedures, Appendix Page 7. See attached.
 - C. By stipulation of the candidates, the Dane County Circuit Court has ordered that any reporting unit having ballots tabulated on Optech Eagles on Election Day shall have those ballots hand counted in the recount.
 - D. Pursuant to §§5.90 and 9.01(1)(b)6., Wis. Stats., all other reporting units having ballots tabulated on automatic tabulating equipment on Election Day shall have those ballots counted on similar automatic tabulating equipment in the recount, excluding those ballots set aside for further review and determination of voter intent by the Boards of Canvassers. This requirement applies regardless of the number of votes tabulated by the automatic tabulating equipment on Election Day. In addition, this requirement applies to any reporting unit within a County, even in circumstances where a municipality may cross County lines.
 - E. All tabulating equipment shall be programmed to read and tally only the race for the Office of the Wisconsin Supreme Court Justice.

- F. For any reporting unit having used Direct Record Electronic (DRE) voting equipment on Election Day, the Boards of Canvassers or designee shall separate individual voter records by cutting the paper record to facilitate the recount of the individual ballots, while at the same time preserving the confidentiality of the individual electors' votes. One vendor has recommended caution and noted the following:
1. Be certain that only the OFFICIAL results tape is used. Cutting additional ballots from a TEST election paper trail will be very confusing.
 2. The voter record or paper trail must be cut in such a way as to preserve the integrity of the original ballot. Things such as "voided" ballots or paper roll changes will have to be taken into consideration.

III. Election Materials for Each Reporting Unit

- A. The County Clerk or designee shall bring the election materials to the recount room.
- B. The County Clerk or designee shall distribute the forms to be used by the tabulators.
- C. The County Clerk or designee shall reset the voting equipment, as necessary.
- D. The Board of Canvassers or designee shall announce the reporting unit being counted.
- E. The Board of Canvassers or designee shall inspect the ballot containers and verify that the tamper evident serial number on ballot container matches the seal number written on the Inspectors' Statement (GAB 104)/Seal Documentation Record and Ballot Container Certification (GAB 101).
- F. The Board of Canvassers or designee shall open the ballot containers.
- G. The Board of Canvassers or designee shall remove all election materials and ballots.
- H. The Board of Canvassers or designee shall provide the poll lists and ballots to the tabulators.

IV. Simultaneous Review, Poll List Reconciliation, Hand Count Procedure, and Record Keeping

- A. Recount Checklists (actual steps for recounting votes) for reporting units having hand counted paper ballots, optical scan voting equipment, or direct recording electronic (DRE)/touch screen voting equipment are found in the Election Recount Procedures at Appendix Pages 8-10. See attached. These Recount Checklists identify the process of conducting the recount and shall be followed, except as specifically modified herein. A checklist identifying each municipality, reporting unit, and date of completion shall be completed by the Board of Canvassers or designee for each reporting unit and attached to the recount minutes.

Regardless of the method of tabulation, the first 10 steps of each of the Recount Checklists are identical and are to be conducted simultaneously, using tabulators as necessary.

- B. Comparing and reconciling poll lists shall be conducted in public during the recount and in the following fashion:
1. Two teams of people shall take the duplicate poll lists for each reporting unit and count the number of voters and the number of absentee voters for each letter of the alphabet, recording those numbers and then tallying it and comparing the sum to the last voter number assigned.
 2. The two teams shall compare the results, correcting any errors made in counting or addition and noting any discrepancies between the two lists as well as the resolution of them.
 3. In addition, the two teams shall identify and compare any notations on the poll lists, such as "assisted," or "challenged," "provisional," and note any discrepancies between the two lists as well as the resolution of them.
 4. The two teams shall then choose three random pages and compare them to ensure they are the same, noting any discrepancies and the resolution of them.
 5. The two teams shall sign their reconciliation sheets identifying the total number of voters, discrepancies and resolutions, and present them to the Canvass Board for approval.

C. Hand Count Procedure

For any reporting unit that was hand counted on Election Day and any reporting unit having been tabulated on the Optech Eagle on Election Day, the following procedures shall apply:

1. Ballots shall be divided between two teams of tabulators. As ballots are sorted to determine the number of ballots, each team of tabulators will sort the ballots into stacks of 25 by candidate and write-in.
2. Upon completing the review of the ballots, the teams shall switch stacks and confirm the accuracy of the first count.
3. Candidates' designated representatives or assistants may request that tabulators set aside ballots for further review and determination of voter intent by the Boards of Canvassers.
4. The Boards of Canvassers shall count the numbers of stacks of ballots for each candidate and tally the totals. The Boards of Canvassers shall then review the ballots set aside for further review and determination of voter intent and tally those votes for each candidate after making the determination of voter intent.
5. Unless a write-in vote is determined to be a vote for a candidate and tallied as such, all other write-in votes shall be tallied together as an aggregate scattering.
6. The Boards of Canvassers shall record the results on duplicate tally sheets (GAB 105). The Boards of Canvassers shall enter a numerical number (i.e. Kloppenburg 125, Prosser 125, write-in scattering 25) for vote totals from the stacks of ballots for each candidate on the tally sheet. The Boards of Canvassers shall separately tally the votes for ballots set aside for further review and determination of voter intent, i.e. hash marks. These tally sheets shall be clearly labeled that they are for the recount. The recount vote totals shall be recorded in the minutes.

D. Record Keeping

1. Detailed recount minutes must be maintained throughout the recount process, from the time it convenes to the time it ends.
2. Documentation of the use of substitute ballots shall be specifically recorded in the recount minutes.

3. All objections or other concerns made by the candidates' representatives must be recorded in the recount minutes, including summaries of arguments by the candidates' representatives and the final disposition by the Canvass Board.
4. Notices to and consultations with the G.A.B. shall be recorded in the recount minutes.
5. The Canvass Board or designee shall clearly mark any exhibit and adequately identify the exhibit by number and brief description in the recount minutes.
6. The recount minutes shall be delivered to the Government Accountability Board promptly upon completion of the recount, with copies provided to the candidates' representatives.

General Checklist of Supplies and Materials Needed for the Recount:

- ☐ Paper and Pens (To record the minutes of the recount!)
- ☐ Tape Recorder (Optional)
- ☐ Speaker Phone (for consultation with GAB staff or counsel)
- ☐ Test Deck for Electronic Voting Equipment Test
- ☐ New *Tally Sheets* (EB-105)
- ☐ New *Canvass Reports* (EB-106)
- ☐ Copies of any informational memoranda relating to the election and the recount prepared by the Government Accountability Board staff and sent to county and municipal clerks.
- ☐ Recount checklists and the *Elections Recount Procedures Manual* available from the Government Accountability Board

Election Materials from Each Reporting Unit:

- ☐ All ballots to be recounted, contained in the original ballot bag or ballot
- ☐ All paper ballot records from direct record electronic (DRE) voting devices
- ☐ All logs of seals for electronic voting machines and tabulators
- ☐ Container with the *Ballot Container Certificate* (EB-101)
- ☐ Both copies of the original *Poll List* (EB-107), including any supplemental voter lists
- ☐ The rejected absentee ballots, contained in the brown carrier envelope—*Certificate of Rejected Absentee Ballots* (EB-102)
- ☐ The used absentee ballot certificate envelopes, contained in the white carrier envelope—*Used Certificate Affidavit Envelopes of Absentee Electors* (EB-103)
- ☐ The *Inspectors' Certificate for Provisional Ballots* (EB-108), provisional ballot reporting form and *Provisional Ballot Certificate* envelopes (EB-123)
- ☐ The original *Inspectors' Statement* (EB-104)
- ☐ The original *Tally Sheets* (EB-105), including the vote printouts generated by electronic voting and tabulating devices
- ☐ The original election results—*Canvass Report* (EB-106)
- ☐ The list of absentee ballot applications prepared by each municipal clerk pursuant to Wis. Stat. § 6.89 and all written *Absentee Ballot Applications* (EB121) filed pursuant to Wis. Stat. § 6.86(1)(a)
- ☐ Materials related to tracking late arriving military ballots

Recount Checklist

Hand Counted Paper Ballots

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- ☐ Compare and reconcile poll lists.
- ☐ Absentee ballot review: number, applications, rejected, defective envelopes.
- ☐ Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EB-104) and Ballot Container Certification (EB-101).
- ☐ Ballot count.
- ☐ Review ballots marked "rejected," "defective," or "objected to."
- ☐ Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
- ☐ Reconcile the number of ballots with the number of voters.
- ☐ Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- ☐ Review provisional ballots.
- ☐ Review late arriving military ballots.
- ☐ Hand count paper ballots and record on duplicate tally sheets (EB-105) accounting for voter intent.
- ☐ Add in any votes counted separately, and prepare canvass statement.
- ☐ Prepare minutes for each reporting unit and attach checklist to minutes.

Recount Checklist

Optical Scan Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- ☐ Compare and reconcile poll lists.
- ☐ Absentee ballot review: number, applications, rejected, defective envelopes.
- ☐ Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EB-104) and Ballot Container Certification (EB-101).
- ☐ Ballot count.
- ☐ Review ballots marked "rejected," "defective," or "objected to."
- ☐ Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
- ☐ Reconcile the number of ballots with the number of voters.
- ☐ Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots*).
- ☐ Review provisional ballots.
- ☐ Review late arriving military ballots.
- ☐ Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EB-104) contains Chief Inspector's initials for pre-election and post-election verification.
- ☐ Test the automatic tabulator (*May be skipped if the Board of Canvassers has conducted a previous test as part of this recount on the same memory card and machine that will be used for this reporting unit*).
- ☐ Manually screen ballots for marks that may not be recorded correctly by the tabulator. Review for voter intent and count separately.
- ☐ Tabulate ballots on the automatic tabulator.
- ☐ Add in any votes counted separately, and prepare canvass statement.
- ☐ Prepare minutes for each reporting unit and attach checklist to minutes.

Recount Checklist

Direct Recording Electronic (DRE)/Touch Screen Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- ☐ Compare and reconcile poll lists.
- ☐ Absentee ballot review: number, applications, rejected, defective envelopes.
- ☐ Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EB-104) and Ballot Container Certification (EB-101).
- ☐ Ballot count.
- ☐ Review ballots marked "rejected," "defective," or "objected to."
- ☐ Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
- ☐ Reconcile the number of ballots with the number of voters.
- ☐ Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots*).
- ☐ Review provisional ballots.
- ☐ Review late arriving military ballots.
- ☐ Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EB-104) contains Chief Inspector's initials for pre-election and post-election verification.
- ☐ Review vote totals generated by DRE at polling place.
- ☐ Hand count permanent paper record of votes generated by DRE and record on duplicate tally sheets (EB-105).
- ☐ Add in any votes counted separately, and prepare canvass statement.
- ☐ Prepare minutes for each reporting unit and attach checklist to minutes.

**STATE OF WISCONSIN
GOVERNMENT ACCOUNTABILITY BOARD**

In the matter of:

A Recount of the Spring Election
for Supreme Court Justice
held on April 5, 2011

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)
)
)
)

ORDER FOR RECOUNT

RECOUNT 11 – 02

On Wednesday, April 20, 2011, a recount petition was filed by JoAnne Kloppenburg, a candidate for the office of Supreme Court Justice, at the Spring Election held on April 5, 2011.

The petition requests a recount of all the wards and municipalities where votes were cast in this election for the office of Supreme Court Justice.

The Government Accountability Board (G.A.B.) staff has reviewed the petition. The petition is sufficient. There was no fee required by s.9.01, Stats.

Pursuant to s.9.01, Stats., of the Wisconsin Statutes:

IT IS ORDERED THAT:

1. A recount shall be conducted of all the votes cast for the office of Supreme Court Justice, at the Spring Election held on April 5, 2011, in the State of Wisconsin.
2. The Board of Canvassers of each County shall convene at 9:00 a.m. on Wednesday, April 27, 2011, to begin the recount.
3. Each Board of Canvass located in a County in which ballots for the Spring Election were tabulated by Optech Eagle machines shall conduct the recount by hand as provided in the Order of the Dane County Circuit Court which is attached.
4. The recount shall be conducted using the procedures established by the Government Accountability Board's Recount Manual and Supreme Court Recount Plan, which are incorporated into this Order by reference herein. The G.A.B. will issue supplemental directions regarding the procedures to be used by the county canvassing boards and communicate those directions to County Clerks via its website.
5. Each County Clerk shall post a notice of the Board of Canvassers' public meeting, pursuant to the Open Meetings Law, including any dates or times that the Board adjourns or reconvenes. Each County Clerk shall immediately notify the G.A.B. of the location of its Board of Canvassers meeting, if the Clerk has not already provided that information, and the G.A.B. shall publish the location of each county's Board meeting on its website.
6. The recount shall be completed by the county boards of canvassers immediately, but no later than May 9, 2011. Each County Clerk shall transmit an email communication to the G.A.B. at the end of each day of the Board of Canvasser's meeting listing the reporting units completed that day and a tally of the votes cast for each candidate and the scattering votes which were counted that day. The email communication shall be in a form prescribed by the G.A.B.

7. Each county clerk shall transmit a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Government Accountability Board immediately after the completion of the county's recount in the manner specified by the G.A.B.

Dated: April 25, 2011.

WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style with a prominent initial "K".

Kevin J. Kennedy
Director and General Counsel

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

via

Nathaniel E. Robinson
Elections Division Administrator

Prepared and Presented by:
David Buerger, Elections Specialist
HAVA Compliance Officer

SUBJECT: Recall Petition Status Update

Introduction

Wisconsin continues to make history with an unprecedented number of recall campaigns currently underway. Since February 2011, Board staff have been preparing for an onslaught of up to 22 recall petitions. Since then, three committees were terminated for failure to file the necessary registration documents.

Nineteen committees completed registration against sixteen State Senators. At least one committee consolidated its efforts with another committee in the same district. Nine committees have failed to submit their signatures by their respective deadline. Nine committees have offered a petition for filing:

Committee	Senator	District	Est. Signatures Offered
Committee to Recall Kapanke	Dan Kapanke	32 nd Senate District	30,000
Committee to Recall Hopper	Randy Hopper	18 th Senate District	22,500
Committee to Recall Olsen	Luther Olsen	14 th Senate District	24,000
Committee to Recall Harsdorf	Sheila Harsdorf	10 th Senate District	23,000
Recall Dave Hansen	Dave Hansen	30 th Senate District	18,872
Jim Holperin Recall Committee	Jim Holperin	12 th Senate District	23,300
Taxpayers to Recall Wirsch	Robert Wirsch	22 nd Senate District	18,300
Committee to Recall Darling	Alberta Darling	8 th Senate District	30,000
Committee to Recall Cowles	Robert Cowles	2 nd Senate District	26,000

Discussion

As committees offered recall petitions for filing, Board staff processed them quickly and efficiently. Board staff worked into the evening on several occasions to scan every page of each petition and upload those images to our website the same day the petition was offered for filing. Data CDs with copies of the scanned petition pages were also provided to both the recall committee and the officeholder. The petitions were also posted on the G.A.B. web site. These special efforts were taken to provide maximum opportunity to the parties and the public for review of the recall petitions.

Once the intake process was complete, Board staff reviewed each petition in the order it was filed. Each petition receives at least two independent reviews. The first review is a facial examination of the information on the page to verify it complies with statutory requirements. In first review, staff verify the petition is clearly labeled a “RECALL PETITION”, that it is properly addressed to the Government Accountability Board and clearly identifies the officeholder to be recalled. Staff verify the signatures provided on the page are accompanied by an address within the district and are dated within the circulation period. Finally, staff examine the certification of the circulator for the name and address of the circulator and verify that the certification is signed and dated within the circulation period and after any signatures collected on the page.

In the second review, a second staff member verifies the determinations of the first reviewer and records the details of any signature determined to be invalid. The second reviewer also enters the unofficial total signature count for each page into a spreadsheet for tallying.

Two LTE staff have been assigned full-time to the review process. The Board has also contracted for two additional temporary staff that have supported the first review process. Other Board staff have participated at varying levels as time and workload permitted. As of the date of this memo, no additional financial resources have been approved by the Legislature.

As of May 5, 2011, Board staff are approximately halfway done with petition reviews. First reviews are ahead of schedule and are anticipated to be complete on all petitions by May 9th. Second reviews have proceeded more slowly due to limited staff availability, but are still on schedule to be completed by May 31st. It is anticipated that as the statewide recount wraps up, additional staff will be available to assist with second reviews.

Staff have also been working diligently to prepare for the May 23rd and May 31st Board meetings by drafting staff recommendations for each petition as well as preparing memoranda summarizing the legal arguments and factual challenges being asserted by each party in their challenge, rebuttal and reply. Staff are cataloging challenges and preparing spreadsheets for staff counsel’s review and use. The following table lays out the schedule for each challenge:

Committee	Challenge Deadline	Rebuttal Deadline	Reply Deadline
Committee to Recall Kapanke	April 15	April 22	April 26
Committee to Recall Hopper	April 21	April 28	May 2
Committee to Recall Olsen	May 2	May 9	May 11
Committee to Recall Harsdorf	May 3	May 10	May 12
Recall Dave Hansen	May 5	May 12	May 16
Jim Holperin Recall Committee	May 5	May 12	May 16
Taxpayers to Recall Wirsch	May 5	May 12	May 16
Committee to Recall Darling	May 5	May 12	May 16
Committee to Recall Cowles	May 9	May 16	May 18

Summary

The recall petition review process requires a significant amount of staff time, but is proceeding on schedule for determinations by the Board at the May 23rd and May 31st meetings. The review of challenges by staff counsel is anticipated to begin the week of May 9th.

Action Requested to be Taken

None. This memo is presented for informational purposes only.

State of Wisconsin\Government Accountability Board

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

via

Nathaniel E. Robinson
Elections Division Administrator

Prepared and Presented by:
Jo Futrell, Elections Specialist
Accessibility Compliance

SUBJECT: Report on Accessibility Compliance Reviews
Inspection of Security Tags and Tamper-evident Seals on Voting Equipment

Introduction

The G.A.B. staff is moving forward with the Onsite Polling Place Accessibility Compliance Program Initiative by utilizing a new online application. The database enables G.A.B. staff to identify polling places in greatest need of attention and therefore, require an onsite visit, and it has the capacity to produce targeted reports of existing barriers to voters with disabilities.

Polling place accessibility data were collected in 2009 from Wisconsin's Municipal and County Clerks. In February and March of 2011, a team of temporary workers entered this data, from over 2,700 paper surveys into a custom-designed online application. Staff members are now able to pinpoint existing barriers to voters with disabilities, track the support G.A.B. provides to municipalities through grants and technical assistance, and follow-up to ensure improvements and compliance recommendations are followed-through.

Discussion

Starting with the 2011 April 5 Spring Election, small teams of G.A.B. staff returned to the field to conduct the On-site Accessibility Compliance Reviews on Election Day. Municipalities and polling places were selected for on-site compliance reviews based on the following criteria:

1. A grant was received from the G.A.B. to assist with improvements
2. Issues revealed by the Accessibility data indicated high priority severity rankings.
3. Complaints or referrals were made in the past.

Each staff's route also included polling places with no readily identifiable barriers to accessibility. Staff visited these locations as time permitted, as a secondary priority.

The April 5 On-site Accessibility Compliance Reviews: The following ten counties in the Southern part of the State were targeted for On-site Accessibility Compliance Reviews: Columbia, Dane, Green, Green Lake, Jefferson, Lafayette, Milwaukee, Sauk, Vernon, and Waukesha. 29 polling places in 28 municipalities were visited.

The May 3 On-site Accessibility Compliance Reviews: The May 3 On-site Accessibility Compliance Reviews focused on the three Legislative Assembly Districts that had been ordered by the Governor to hold Special Elections on May 3 in the following counties: La Crosse, Monroe, Ozaukee, Waukesha, and Washington. In Assembly District 60, reviewers went to Mequon, Grafton, Cedarburg, and Port Washington. In Assembly District 83, reviewers went to Big Bend and Muskego. In Assembly District 94, staff went to New Salem, Bangor, and La Crosse. Staff visited 30 polling places in 28 municipalities.

Electronic Voting System Security: During the On-site Accessibility Compliance Reviews on April 5 and May 3, staff also performed a visual inspection of the security tags on voting equipment to verify that serial numbers on the inspector's statement matched the machines and tamper-evident seals. While the reviews reached a small sampling of municipalities, the results are mixed. Some municipalities demonstrate excellent compliance with security procedures, a reflection of effective training at the local level.

In other municipalities, chief inspectors are not following the proper security procedures. Staff found that many chief inspectors are not doing pre-election security checks as required. They do not seem to fully understand the need for the tamper-resistant seal and security checks, nor are they using their incident logs to record anything unusual with regard to the security tags. In general, the chief inspectors do not seem comfortable with the voting equipment and are not encouraging voters to use the accessible machines, regardless of disability. G.A.B. will address these issues by improving chief inspector training with an emphasis on security procedures and promoting the use of accessible equipment by all voters.

Summary

Staff reported positive receptions at the polling places they visit. The Chief Inspectors seem genuinely pleased to have a G.A.B. staff person take the time to review their Election Day set-up. There is positive evidence at many polling places that clerks and poll workers are aware of Accessibility concerns and are amenable to addressing issues with low-cost, creative solutions. They are eager to make changes whenever suggestions are made; however, there are still significant improvements that remain to be made.

Additional Issues found by staff include during the April 5 and May 3 Elections

1. Insufficient signage for parking spaces and entrances
 - Parking spaces are not clearly marked by signs, especially for van accessibility.
 - Accessible entrances are not marked as such with a sign.
 - Chief inspectors are not aware that signs and supplies for improved accessibility are available at no cost from the G.A.B.
2. Doors that require more than 8 lbs. of force to open
3. Doors that do not have lever door handles or an electronic feature such as an automatic opener, power-assist or bell/buzzer

4. Insufficient clearance around voting equipment and tables for a person to maneuver in a wheelchair
5. Lack of privacy for voters using accessible equipment
6. Required election notices are not always posted and those posted are not printed in 18 point font

Next Steps

1. Distribute follow-up letters to Municipal and County Clerks that polling places were visited on April 5 and May 3. The letters will contain detailed results of the reviews, as well as G.A.B. recommendations for improved compliance.
2. Prepare for On-site Accessibility Compliance Reviews for Recall Elections tentatively scheduled for July 12, 2011.
3. Continued development and completion of the online Accessibility application to include:
 - The addition of a component to track G.A.B. support to municipalities through grants and technical assistance.
 - Development of a feature to enable G.A.B. staff to use mobile devices to conduct surveys in the field with access to the online application.
 - Once completed, G.A.B. will present a demonstration of the online application to an ad hoc group of Municipal and County Clerks for their review and input. Clerks will be able to conduct Accessibility surveys online and update records as improvements are made or as needed.
4. Expand the membership of the G.A.B. Accessibility Advisory Group.

Action Requested to be Taken

None.

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

To: Kevin Kennedy
Director and General Counsel
Government Accountability Board

From: Jo Futrell
Elections Accessibility Specialist

Date: May 11, 2011

Subject: Follow-up Letter to Clerks for April 5 On-site Accessibility Compliance Reviews

On May 3, 2011, G.A.B. teams visited polling places in three Wisconsin legislative districts for the purpose of conducting the Polling Place Accessibility Survey during the Special Elections. The municipal clerk for each of the polling places we visited will receive a copy of the attached letter. The appropriate County clerk for each municipality visited will also receive a copy of the letter. The letters were mailed out on May 10, 2011.

Following is a list of the Municipal and County clerks who will receive the follow-up letter:

Municipal Clerks:

Constance McHugh	Community Center Gym	City of Cedarburg
Terry Lehrke	City Hall	City of La Crosse
Lee Szymborski	Crossroads Church	City of Mequon
Caroline Burmaster	National Guard Armory	City of Onalaska
	Omni Center	City of Onalaska
Mark Grams	Thomas Jefferson Middle Schl.	City of Port Washington
Amy Reuteman	City Hall Council Chambers	City of West Bend
George Wolf	Bangor Town Hall	Town of Bangor
Sally Kay Stelloh	Barre Town Hall	Town of Barre
Jim Gitz	Campbell Town Hall	Town of Campbell
Dawn Priddy	Cedarburg Fire Department	Town of Cedarburg
	Cedarburg Town Hall	Town of Cedarburg
Jessica Schmidt	Grafton Town Hall	Town of Grafton
Lois Meinking	Town Hall	Town of Greenfield
Sara Schultz	Town Hall	Town of Hamilton
Doug Schroeder	Leon Town Hall	Town of Leon
Terry Houlihan	Medary Town Hall	Town of Medary
Kathy Wilson	Mukwonago Town Hall	Town of Mukwonago
Jennifer Schlenvogt	Town Hall	Town of Port Washington
David Milne	Portland Town Hall	Town of Portland
Christopher Lear	Saukville Town Hall	Town of Saukville

Kathy Onsager	Town Hall Annex	Town of Shelby
Marie Kumershek	Vernon Town Business Office	Town of Vernon
Debora Klund	Washington Town Hall	Town of Washington
Shelly Miller	Village Hall	Village of Bangor
Barbara Woppert	Village Hall	Village of Big Bend
Terry Dylak	John Long Middle School	Village of Grafton
Tara Brueggeman	Melvina Village Hall	Village of Melvina
Sue Donskey	Village Hall	Village of Rockland
Dawn Wagner	American Legion Post	Village of Saukville

County Clerks:

Ginny Dankmeyer	La Crosse County
Shelly Bohl	Monroe County
Julianne Winkelhorst	Ozaukee County
Brenda Jaszewski	Washington County
Kathy Nickolaus	Waukesha County

cc: Nathaniel E Robinson
 Elections Division Administrator
 Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

To: Kevin Kennedy
Director and General Counsel
Government Accountability Board

From: Jo Futrell
Elections Accessibility Specialist

Date: April 12, 2011

Subject: Follow-up Letter to Clerks for April 5 On-site Accessibility Compliance Reviews

On April 5, 2011, G.A.B. teams visited a select group of polling places in southern Wisconsin for the purpose of conducting the Polling Place Accessibility Survey. The municipal clerk for each of the polling places we visited will receive a copy of the attached letter. The appropriate county clerk for each municipality visited will also receive a copy of the letter. The letters were mailed out on April 11, 2011.

Following is a list of the Municipal and County clerks who will receive the follow-up letter:

Municipal Clerks:

Matt Trebatoski	Municipal Building	City of Fort Atkinson
Maribeth Witzel-Behl	Sherman Middle School	City of Madison
Paul Ziehler	General Mitchell Field House	City of West Allis
	Irving School Field House	City of West Allis
Jane Carlson	Hillcrest School	Town of Brookfield
Mary Jo Niffenegger	Cadiz Town Hall	Town of Cadiz
James Rutledge	Clarno Town Hall	Town of Clarno
Mary Stanek	Greenwood Town Hall	Town of Greenwood
Sonia Kay Robson	Kingston Town Hall	Town of Kingston
Corrine Krueger	Manchester Senior Center	Town of Manchester
Karen Sutter	Monroe Town Hall	Town of Monroe
Lorie Robelia	Monticello Town Hall	Town of Monticello
Dan Karlen	American Legion	Town of Mount Pleasant
Joanne Bennett	New Diggings Town Hall	Town of New Diggings
Patricia Salter	New Glarus Town Hall	Town of New Glarus
Rodney Kok	Randolph Town Hall	Town of Randolph
Rebecca Lynn Meyer	Reedsburg Town Hall	Town of Reedsburg
Mary Ball	Sullivan Town Hall	Town of Sullivan
Barbara McGann	Sumner Town Hall	Town of Sumner
Donna Ziegler	Sumpter Community Center	Town of Sumpter
Elaine Fronk	Union Town Hall	Town of Union

Cindy Schroeder	Waterloo Town Hall	Town of Waterloo
Nancy Anderson	York Town Hall	Town of York
Sandra Flannery	Argyle Public Library	Village of Argyle
April Little	Belleville Village Hall	Village of Belleville
Kathy Jerome	Kingston Village Hall	Village of Kingston
Shellie Benish	Municipal Building	Village of Merrimac
Joel Dutenhoefer	Monticello Village Hall	Village of Monticello
Dale Horton	Sullivan Village Park	Village of Sullivan

County Clerks:

Karen Peters (Deputy Clerk)	Dane County
Michael Doyle	Green County
Margaret Bostelmann	Green Lake County
Barbara Frank	Jefferson County
Linda Bawden	Lafayette County
Lisa Catlin Weiner	Milwaukee County
Beverly J. Mielke	Sauk County
Ron Hoff	Vernon County
Kathy Nickolaus	Waukesha County

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JUDGE GORDON MYSE
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

via

Nathaniel E. Robinson
Elections Division Administrator

Prepared and Presented by:
Sarah Whitt, Function Team Lead
John Hoeth, IS Technical Resources

SUBJECT: Enhanced Mail-In Voter Registration

Introduction

Staff continues development of the new Enhanced Mail-In Voter Registration process, which uses the Voter Public Access website and SVRS to facilitate voter registration. This is a web-based portal where voters can fill in voter registration form. The data is saved in SVRS, so when the clerk receives the mailed in form, they can simply review and approve the pending voter application in SVRS rather than having to data enter the information on the form.

Discussion

Staff went on the road in three counties to demonstrate and receive feed back from municipal and county clerks in February, and also had a public demonstration in March. These were very well received, and of significant benefit to staff

The staff has taken all the feedback from the local election officials and the community groups that resulted from the demonstrations in February and March. Many suggestions were received regarding look and feel, as well as improvements to make the system more user friendly. The election officials were very excited about getting this implemented since it will save time and money on their end.

The new system has also been upgraded with the changes that were suggested by Paul Malischke and recommended by the Board at the last meeting, on March 22, 2011. These upgrades now include the Social Security option as well as the neither option as requested to allow all voters to be able to use this method of registration.

Next Steps

User Acceptance Testing of the new system is scheduled for late May – early June, 2011. Training materials and other instructions to clerks will be prepared during the testing period. The finalized system will be presented to the Wisconsin Election Assistance Council before being launched to the public.

Action Requested to be Taken

None.

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JUDGE THOMAS BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of May 17, 2011

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:
Michael Haas, Staff Counsel
Edward Edney, SVRS Application Trainer

SUBJECT: Legislative Status Report

Following is a summary of legislative proposals that Board staff is monitoring:

1. Senate Bill 6 and Assembly Bill 7 and Assembly Bill 67: Photo ID:

SB6 and AB7 were introduced as identical companion bills which would require electors to show a valid form of photo identification prior to receiving a ballot. SB6 has been amended and is at the final stage before passage in the Senate, but has not been considered in the Assembly. AB7 also has been amended through two substitute amendments and was made a special order of business before the Assembly on May 11, 2011. An update on the latest legislative action regarding AB7 will be provided at the Board meeting.

AB67 was introduced as a separate companion bill to SB6 which would require electors to show a valid form of photo identification prior to receiving a ballot. AB67 would in addition change the deadlines for late registration and in-person absentee voting, and require G.A.B. to provide an interactive electronic registration form. The bill was referred to committee and has not been scheduled for public hearing.

2. Senate Bill 17 and Assembly Bill 28: Reporting by nonresident committees:

SB17 and AB28 are companion bills which have been referred to committees but have not received public hearings. The legislation would expand the amount of campaign finance information which is required to be reported by nonresident political committees. Currently such committees are required to report only contributions received by Wisconsin residents and expenditures made which involve Wisconsin elections.

3. Assembly Bill 32: Communications by legislators:

AB32 also has been referred to committee and has not been scheduled for a public hearing. The bill would modify the statute which prohibits legislators who are up for re-election from distributing more than 49 pieces of substantially identical material between June 1st of the election year and the date of the election. The bill would create an exception for communications to constituents during the 45 days following a declaration of emergency if the communication relates to the subject of the emergency.

4. Senate Bill 35: Reducing legislative districts

SB35 reduces the number of State Senators from 33 to 25 and the number of Assembly Representatives from 99 to 75. The bill would apply to the next decennial legislative redistricting that occurs after its enactment. The bill was referred to committee and has not been scheduled for public hearing.

5. Senate Bill 25 and Assembly Bill 36: Dissolving regional transit authorities

SB25 and AB36 are companion bills which would eliminate legislative authorization to create regional transit authorities, dissolve any existing regional transit authority and the Southeastern Regional Transit Authority, and eliminating the Southeast Wisconsin transit capital assistance program. RTAs may conduct referendum elections, and therefore this legislation would affect the Board's administration of SVRS. The companion bills have been referred to the respective oversight committees.

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JUDGE THOMAS H. BARLAND
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared by:

Shane W. Falk, Staff Counsel

SUBJECT: Status Report on Pending Administrative Rule-Making

This Status Report is for informational purposes only and no immediate action is requested. Following this introduction and the legislative summary of companion bills AD8/SD8 (January 2011 Special Session) is a brief status of pending rule-making resulting from past actions of the Government Accountability Board. All administrative rules identified in this summary reference permanent rule-making.

Since the last Board meeting, the primary activity on rule-making occurred with respect to GAB §1.28 and GAB §1.91.

Please note that there are several additional rules not addressed in this status report that the Board has affirmed, but for which the staff has identified the need for additional review and revision. The staff will present recommendations at subsequent meetings regarding those involved rules.

ASSEMBLY BILL 8 and SENATE BILL 8, January 2011 Special Session: Admin. Rules

These companion bills relate to: the authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; and venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state.

The Assembly and Senate have primarily acted on the Assembly version of this bill. It passed the Assembly and was messaged to the Senate, where the Senate adopted one additional amendment. The Senate messaged it back to the Assembly, where it was referred to the

February 24, 2011 calendar for final concurrence by the Assembly before messaging the bill to the Governor for signing. No action appears to have been taken on February 24, 2011 and it has not been rescheduled for a floor session since. It appears that the Assembly must still vote to concur in the Senate version of the bill. Several germane amendments were offered in the Senate to exclude constitutional offices and independent agencies (G.A.B. included) from the gubernatorial approval provisions of the bill. These amendments were tabled and not included in the final version of the bill approved by the Senate and messaged to the Assembly.

If adopted into law, this legislation will significantly impact the Board's administrative rule-making efforts summarized herein. Many of the Board's administrative rule-making efforts may be slowed significantly, if written approvals by the Governor are not granted and received quickly. In addition, the limitations on rule-making authority may affect the ability to adopt certain rules. Substantial additional staff effort may be necessary to comply with economic impact analysis requirements for rules that the Governor permits to move forward.

The following is a fairly detailed summary of significant impacts and changes of the legislation:

I. Regarding Rule-Making Authority:

- A. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond that which is expressly conferred on the agency by the Legislature.
- B. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond that which is expressly conferred on the agency by the Legislature.
- C. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the statutory provision.

II. Regarding Governor Approval of Statements of Scope:

- A. An agency must present the statement of scope to the governor and the policy-making body of the agency for approval. The agency may not send the statement to the LRB for publication until the governor issues a written notice of approval of the statement. No state employee or official may perform any activity in connection with the drafting of a proposed rule (except to prepare the statement of scope) until the governor and the policy-making body for the agency has approved the statement. Note: There is no timeline provided for the Governor's review and the bill specifically repeals the automatic approval after 30 days or 10 days after publication in the admin register, whichever is later.
- B. If the governor approves a statement of scope, the agency shall send the statement to the LRB for publication in the admin register.

III. Regarding Economic Impact Analyses of Proposed Rule

- A. An agency shall prepare an economic impact analysis for a proposed rule before submitting the proposed rule to the legislative council staff. Note: Current law only requires the economic impact analysis if the secretary of administration directs the agency to do one and only before the proposed rule is presented to the Legislature, which is much later than the proposed bill.
- B. An economic impact analysis of a proposed rule shall contain information on the economic effect on specific businesses, business sectors, public utility ratepayers, and the state's economy as a whole. The agency shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule.
- C. The economic impact report shall include all of the following: (Note: The bill repeals and replaces comments from the Dept. of Commerce, which is consistent with the Governor's plan to eliminate that agency.)
 - 1. An analysis and quantification of the policy problem that the rule intends to address, including comparisons with approaches used by the feds, Illinois, Iowa, Michigan, and Minnesota to address that policy problem and if the agency chooses a different approach, a statement as to why.
 - 2. An analysis and detailed quantification of the economic impact of the rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses and individuals that may be affected by the rule.
 - 3. An analysis of the actual and quantifiable benefits of the rule, including an assessment of how effective the rule will be in addressing the policy problem the rule intends to address.
 - 4. An analysis of alternatives to the rule, including the alternative of not promulgating the rule.
 - 5. A determination made in consultation with the businesses and individuals that may be affected by the rule as to whether the rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.
- D. On the same day that the agency submits the economic impact analysis to the legislative council staff, the agency shall also submit that analysis to the DOA, the governor, and to the chief clerks of each house of the Legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses and to the co-chairpersons of the joint committee for review of administrative rules. The agency shall revise this analysis if the rule is revised.
- E. If the economic impact analysis regarding the rule indicates that a total of \$20,000,000 or more in implementation and compliance costs are reasonably expected to be incurred or passed along to businesses or individuals as a result of the rule, the DOA shall review the rule and issue a report. The agency may not submit the rule to the Legislature for review until the agency receives the DOA report.

IV. Regarding Governor Approval of Final Draft of Rules:

After a proposed rule is in final draft form, the agency shall submit the rule to the Governor for approval. The Governor, in his or her discretion, may approve, modify, or reject the proposed rule. The agency may not submit the proposed rule to the Legislature for review or file the rule with the LRB for publication unless the Governor has approved the proposed rule in writing. Note: The new procedures involving the Governor's review would be a significant change to the rulemaking process, particularly given the independent agency status and nonpartisan structure of the G.A.B. The bill would require any new rule to obtain the Governor's approval of the Statement of Scope, as well as the text of the rule both before it is presented to the Legislature AND after the Legislature approves it.

V. Regarding Governor Approval of Emergency Rules and Statements of Scope for Emergency Rules:

- A. An agency shall prepare a statement of scope of the proposed emergency rule and obtain approval of the Governor in the same process as for a permanent rule. The statement of scope is sent to the LRB for publication in the administrative register at the same time that the proposed emergency rule is published (as used here, "publish" means in the newspaper.)
- B. An agency shall submit the proposed emergency rule in final draft form to the Governor for approval in the same fashion as approval for a permanent rule and may not file the emergency rule (here, "file" means submission to the LRB for publication in the administrative register) until so approved in writing by the Governor. Note: We can technically publish an emergency rule in the paper with only the Governor's approval of the statement of scope, which seems to make it effective; however, the Governor must approve the filing of the rule with the LRB, which is required to perfect the effectiveness of the rule. In practice, this is a veto power by the Governor on an emergency rule, as an agency would not in practice publish an emergency rule in the paper unless it could simultaneously file the emergency rule with the LRB to finalize the effective date.
- C. Before filing an emergency rule with the LRB, the agency shall prepare an economic impact analysis for the emergency rule in the same manner as a permanent rule and submit it to the DOA, governor, and to the chief clerks of each house of the Legislature, who shall distribute the analysis to the presiding officers of their respective houses, to the chairpersons of the appropriate standing committees of their respective houses, and to the co-chairpersons of the joint committee for review of administrative rules. The same \$20,000,000 impact threshold is imposed for mandating a DOA report and the agency may not file the rule with LRB until it receives a copy of the DOA report and approval from the Secretary of the DOA.

VI. Regarding Judicial Review of the Validity of a Rule:

Jurisdiction resides in the circuit court for the county where the party asserting the invalidity of the rule resides or has its principal place of business or, if that party is a nonresident or does not have its principal place of business in this state, in the circuit court for Dane County.

VII. Effective Dates of Bill (generally, an Act is effective the day after the date of publication of the Act):

- A. Venue: first applies to actions commenced on the effective date of the venue subsection.

- B. Rule-Making Authority: first applies to a proposed administrative rule submitted to the Legislative Council staff on the effective date of this subsection of the bill.
- C. Economic Impact Analyses: first applies to a proposed administrative rule submitted to the Legislative Council staff on the effective date of this subsection of the bill.
- D. Gubernatorial Approval: first applies to a proposed rule or emergency rule whose statement of scope is presented to the Governor for approval on the effective date of this subsection of the bill.

STATUS REPORT ON PENDING ADMINISTRATIVE RULE-MAKING

Revise 1.10

Relating to: Registration by Nonresident Committees and Groups

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to revise title of 1.10. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.15

Relating to: Filing Reports of Late Campaign Activity (Postmarked Reports)

Status: Board original action on March 30, 2009. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove two references to postmarked reports. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.20

Relating to: Treatment and Reporting of In-Kind Contributions

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to remove a reference to an old form, Schedule 3-C, that is no longer necessary due to the implementation of CFIS. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.21

Relating to: Treatment of Joint Account Contributions

Status: Board original action on June 9, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to create a rule addressing treatment of contributions from joint accounts. Will return to Board with draft rule. Likely will

complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.26

Relating to: Return of Contribution

Status: Board original action on May 5, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to correct grammatical error. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.28

Relating to: Scope of Regulated Activity

Status: Before the Board for initial action at March 22-23, 2011 meeting. Emergency Rule 1.28 was adopted by the Board at the December 22, 2010 meeting and published on January 7, 2011. This Emergency Rule is effective for 150 days and will expire at the end of the day on June 5, 2011. A public hearing occurred on Emergency Rule 1.28 on February 16, 2011, with only Attorney O'Neil reasserting the same written comments the Board received at its December 22, 2010 meeting. Litigation is pending and the Wisconsin Supreme Court continues an injunction of the permanent Rule 1.28 that was effective on August 1, 2010, expanding the definition of political purpose. Upon advice of counsel the Board adopted an Emergency Rule 1.28 to remove the second sentence of Rule 1.28(3)(b).

The Supreme Court was originally scheduled to hear oral arguments on the litigation in March 2011 with an expected decision prior to the expiration of the Emergency Rule 1.28; however, the Supreme Court canceled oral arguments and they will not be rescheduled to occur until after September 2011. Since the Emergency Rule 1.28 will expire prior to oral arguments, even if two 60 day extensions are granted, counsel advised staff that the Board should proceed with permanent rule-making. This permanent rule-making will potentially be subject to AB 8 (January 2011 Special Session) if adopted and enacted, which may require staff to bring the rule back to the Board again to proceed under the new law.

On May 6, 2011, staff delivered a request to the Joint Committee for Review of Administrative Rules seeking to extend EmR 1.28 for 60 days. The Emergency Rule is scheduled to expire at the end of the day on June 5, 2011.

Revise 1.43

Relating to: Referendum-related activities by committees; candidate-related activities by groups.

Status: Board original action on May 5, 2008. Scope statement drafted for August 10, 2009 meeting and then can begin rule-making process to remove 1.43(2)(a) as the law no longer requires listing all candidates supported and s. 11.05(4), Stats., allows one registration statement. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 1.85 and 1.855

Relating to: Conduit Registration and Reporting Requirements; Contributions from Conduit Accounts

Status: Board original action on October 6, 2008. Scope statement approved at August 10, 2009 meeting, which must be submitted to the Legislative Reference Bureau and then can begin rule-making process to harmonize certain portions of these rules with current law and new CFIS system. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Create 1.90

Relating to: MCFL Corporation Registration and Reporting Requirements

Status: Board original action August 27, 2008. Scope statement approved by the Board at the December 17, 2009 meeting. Draft rule was approved by the Board at the March 23-24, 2010 meeting. The Statement of Scope must be submitted to the Legislative Reference Bureau for publication to begin the rule-making process. Will likely have to hold public hearing, so following submittal to Legislative Council will hold public hearing and then submittal to legislature before publication.

Create 1.91

Relating to: Organizations Making Independent Disbursements

Status: Board original action May 10, 2010. At the March 23-24, 2010 Board meeting, the Board considered the ramifications of the U.S. Supreme Court decision, *Citizens United v. FEC*. The Board adopted an interim policy regarding corporate independent expenditures. Staff was directed to draft an emergency rule which was adopted by the Board at the May 10, 2010 meeting. In addition, the Board directed staff to promulgate permanent rules to address independent expenditures in the context of *Citizens United*.

Emergency rule was published and effective May 20, 2010, but was only effective for 150 days and would have expired on October 16, 2010. Staff requested an extension so that the emergency rule was in effect throughout the Fall Election and on August 24, 2010, the Joint Committee for the Review of Administrative Rules granted the 60 day extension. The Emergency Rule was continued until an expiration date of December 15, 2010. Staff requested an additional 60 day extension from the Joint Committee for the Review of Administrative Rules. This is the last extension was granted and the rule expired on February 15, 2011.

Staff published the scope statement on the permanent rule and on July 7, 2010 and also submitted the proposed permanent rule to Legislative Council for review. The Legislative Council Report was received by staff on August 3, 2010. The public hearing on both the emergency and permanent rules was held on August 30, 2010. Staff filed a Legislative Report and the Senate standing committee's 30 day review period expired on February 14, 2011. The Assembly standing committee's 30 day review period was set to expire on February 25, 2011; however, on the committee requested a meeting which automatically extended its review period an additional 30 days. Staff was not contacted to schedule a meeting with the committee, but staff did

receive notice that the committee objected to the proposed permanent rule on March 24, 2011 following a public hearing before the Assembly Committee. The Assembly standing committee's objection was made prior to the expiration of its jurisdiction on March 28, 2011.

The Assembly Committee referred the proposed permanent rule to the Joint Committee for Review of Administrative Rules, which held a public hearing on April 27, 2011. Staff attended the hearing and spoke in favor of the proposed permanent rule. At the request of the Joint Committee, staff also submitted written testimony to the Joint Committee on April 28, 2011.

Pursuant to §227.19(5)(b), Wis. Stats., the Joint Committee for Review of Administrative Rules would have had a 30 day review period from the date that the proposed permanent rule was referred to it with the Assembly Committee's objection. The Joint Committee for Review of Administrative Rules noticed a public hearing to consider the proposed permanent rule, which extended its jurisdiction and review period another 30 days. Since the original referral to the Joint Committee for Review of Administrative Rules was made on April 7, 2011 and including the 30 day extension, the review period will now expire on June 6, 2011.

Pursuant to §227.19(5)(c), Wis. Stats., the G.A.B. is prohibited from promulgating the proposed permanent rule unless the Joint Committee nonconcurs in the Assembly Committee's objection or an introduced bill objecting to the rule fails to be enacted. If the Joint Committee objects to the proposed permanent rule, it must take executive action to introduce a bill in each house of the Legislature supporting the objection. These bills must be introduced within 30 days of the Joint Committee's objection. If the Joint Committee objects to the proposed permanent rule, pursuant to §227.19(6)(a), Wis. Stats., it will have to append a written report to the bills which include an explanation of any issue with the rule, arguments for and against the rule, and the grounds upon which the Joint Committee relies for the objection.

Revise Chapter 3

Relating to: Voter Registration, HAVA Checks

Status: Board original action August 27, 2008. Must draft scope statement and then begin rule-making process to make further revisions to Chapter 3 regarding voter registration and HAVA checks. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 3.01(6) and 12.01(2)

Relating to: Election Cycle Period for SRD and Municipal Clerk Training

Status: Board original action August 30, 2010. Scope Statement was approved by the Board at the August 30, 2010 meeting and must be published with the Legislative Reference Bureau. Thereafter may begin rule-making process to change the election cycle for special registration deputy and municipal clerk training so that the cycle begins on January 1 of an even-numbered year and continues through December 31 of the following odd-numbered year. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to the legislature (unless someone petitions for a hearing.)

Repeal and Recreate Chapter 4

Relating to: Election Observers

Status: Board original action on August 27, 2008. Final draft of Chapter 4 approved March 30, 2009 based upon comments from emergency rule proceedings. Board reviewed the rule and took renewed action on September 13, 2010. Emergency Rule was published on September 24, 2010. Scope statement published and was approved by the Board at its October 11, 2010 meeting. The final version of Chapter 4 was submitted to Legislative Council for review and its report was due back to the G.A.B. on November 24, 2010, but is expected prior to the Board's next meeting on December 13, 2010. A public hearing is scheduled for December 13, 2010 at the Board's meeting. Thereafter, the rule will be submitted to the Legislature before publication.

Repeal and Recreation of Chapter 5

Relating to: Security of Ballots and Electronic Voting Systems

Status: Board original action on May 5, 2008. Legislative Council review complete. Public Hearing held November 11, 2008 and some additions may be necessary. The Legislative Report for Chapter 5 will be submitted after the Board considers an additional provision to the chapter at the October 5, 2009 and now November 9, 2009 meetings. These additions resulted from public comments. Additions approved by the Board at the November 9, 2009 meeting. Legislative Report will be submitted and upon return, publication.

Revise 6.02

Relating to: Registration Statement Sufficiency.

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009 meeting and then can continue rule-making process to clarify sufficiency standards. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.03

Relating to: Assistance by Government Accountability Board Staff

Status: Board original action on March 30, 2009. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. This will officially begin the rule-making process to update statutory citations with new statutes post 2007 Act 1. Likely will complete with a statutory procedure that will not require a public hearing before submittal to legislature.

Revise 6.04

Relating to: Filing Documents by FAX or Electronic Means

Status: Board original action on March 30, 2009. Scope statement submitted for publication. Draft rule approved by the Board at the December 17, 2009. Must submit

to the Legislative Council for review to continue rule-making process to clarify electronic filing requirements. Likely will complete with 30 day notice rule-making, which will not require a public hearing before submittal to legislature (unless someone petitions for a hearing.)

Revise 6.05

Relating to: Filing Campaign Finance Reports in Electronic Format

Status: Board original action on March 30, 2009. Scope statement published. Legislative Council Report back June 25, 2009. Need to make revisions suggested by Legislative Council and publish Notice of Hearing. Thereafter, submittal to legislature.

Revise Chapter 7

Relating to: Approval of Electronic Voting Equipment

Status: Board original action on May 5, 2008. Division Administrator Robinson establishing a committee to make recommendations. Must draft scope statement and then begin rule-making process. Will require public hearing, so following submittal to Legislative Council will have public hearing before submittal to legislature.

Revise 9.03

Relating to: Voting Procedures for Challenged Electors

Status: Board original action on May 5, 2008. Scope statement and draft rule approved by the Board at the December 17, 2009 meeting. Must draft Statement of Scope to begin the rule-making process to remove a reference to lever voting machines. Likely will complete with statutory procedure that will not require a public hearing before submittal to legislature.

Revise 12.01(2) See 3.01(6) above.

Creation of Chapter 13

Relating to: Training Election Officials

Status: Board original action on January 28, 2008. Rule in draft form and ready for submittal to Legislative Council for review. Board approved draft rule at the August 10, 2009 meeting, so must now submit to Legislative Council for review. Thereafter, if not doing 30 day notice rule-making, will need public hearing and then submittal to legislature before publication.

Repeal 21.01, 21.04 and Revise 20.01

Relating to: 21.01—filing of all written communications and documents intended for former Ethics Board

21.04—transcripts of proceedings before former Ethics Board

20.01—procedures for complaints before former Elections Board

Status: Board original action on January 28, 2008. Legislative Council review complete. No public hearing necessary as processing as 30 day notice rule-making and

no petition for public hearing was filed. These rules are ready for completion of legislative report and submittal to legislature. Thereafter, publication.

Creation of Chapter 22

Relating to: Settlement of Certain Campaign Finance, Ethics, and Lobbying Violations

Status: Board original action on June 9, 2008. Final draft of Chapter 22 approved March 30, 2009. Submitted to Legislative Council and report has been returned. Revisions made and Notice of Public Hearing published. Public Hearing held July 28, 2009 and reviewed by Board at the August 10, 2009 meeting. Legislative Report will be submitted and upon return, publication.

Creation of Chapter 26

Relating to: Contract Sunshine

Status: Board original action at the July 21-22, 2010 meeting, at which the Board approved the scope statement. Staff published the scope statement. Proposed rule approved by the Board at the August 30, 2010 Board meeting. On September 10, 2010, staff distributed the rule to all agencies for preview and comment. Staff will also submit it to Legislative Council for review. Likely will proceed with a public hearing upon return of the rule from Legislative Council.

State of Wisconsin\Government Accountability Board

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011 Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board

Prepared by Elections Division Staff. Presented by:
Nathaniel E. Robinson
Elections Division Administrator

SUBJECT: Elections Division Update

Election Administration Update

Introduction

Since the Government Accountability Board's March 22, 2011, meeting, the Elections Division has focused on the following tasks:

1. Spring Election and Special Primary for Partisan Office

The Spring Election and Special Primary for Assembly Districts 60 and 94 were conducted on Tuesday, April 5, 2011. Judicial offices up for election were Justice of the Supreme Court, Court of Appeals Judge, Districts 3 and 4, 41 Circuit Court Judge positions in several counties, and various county, municipal and school district offices throughout the state. Some jurisdictions also had referenda questions on their ballots. There were no registered write-in candidates for any state office.

Special Primaries

Governor Walker called elections to fill the vacancies in Assembly Districts 60, 83 and 94, caused by the resignations of Mark Gottlieb, Scott L. Gunderson and Michael D. Huebsch, respectively. Two districts, 60 and 94, required primaries which were conducted in four counties. No primary was required for the office of Representative to the Assembly, District 83.

As you may remember from Election Division Update for the March 22nd meeting, a timing issue presented itself with respect to absentee ballot preparation. The G.A.B. was statutorily required to certify the special primary results no later than April 14th. Ballots however, were required to be available for absentee voting no later than April 12th. County clerks conducting partisan primaries were encouraged to submit their canvasses as soon as possible which would allow the G.A.B. to certify the Special Primaries quickly so that clerks could begin printing absentee ballots

for the May 3 Special Election. Ballot printers were instructed to provide the clerks with ballots in electronic format to be issued to voters requesting absentee ballots until official ballots were printed and delivered. There were no reports of ballots not being available for absentee voters. Canvasses from all four counties conducting partisan primaries were received by Thursday, April 7th. No petitions for recount were filed by the deadline of 5:00 p.m. on Tuesday, April 12. Judge Deininger signed the special primary canvass statement on April 12, 2011.

The following candidates have been certified to the May 3, 2011 special election ballot:

- District 60
 - Duey Stroebel (Republican)
 - Rick Aaron (Democrat)
- District 83
 - Dave Craig (Republican)
 - James Brownlow (Democrat)
- District 94
 - John Lautz (Republican)
 - Steve Doyle (Democrat)

Spring Election

The deadline for G.A.B. to receive the Spring Election canvasses from the counties was Friday, April 15, 2011. All canvasses were received by the statutory deadline. The statutory deadline for G.A.B. staff to complete the canvass was May 15, 2010. Staff completed the canvass on April 15 which set the deadline for petitioning for a recount at 5:00 p.m. on Wednesday, April 20. Petitions for recount were timely filed for the offices of Justice of the Supreme Court and Sheboygan County Circuit Court Judge, Branch 3. The canvass statements for Court of Appeals Judge and Circuit Court Judge (excluding Sheboygan, Branch 3) were signed by Judge Deininger on Thursday, April 21, 2011. Certificates of Election were mailed to candidates immediately following the signing of the canvass statements.

2. May 3, 2011 Special Election for Partisan Office

The special election for the offices of Representative to the Assembly, Districts 60, 83 and 94 was held on Tuesday, May 3, 2011. The deadline for submitting county canvasses to the G.A.B. was May 14. All 7 counties conducting special elections submitted canvasses electronically by May 5th, setting the deadline for petitioning for recount at 5:00 p.m. on Tuesday, May 10th. At the writing of this memo, staff anticipates no petition for recount and has tentatively set certification of the Special Election for Thursday, May 12th.

3. Recounts

The recount for the office of Sheboygan County Circuit Court Judge, Branch 3 was completed on April 26, 2011, setting the deadline for appeal of the recount to circuit court at close of business on Tuesday, May 3, 2011. No appeal was filed, and Judge Nichol signed the canvass on Thursday, May 5, 2011. The recount results reflected the same winner as the original results. A certificate of election was immediately transmitted to the winner.

On Monday, April 25th, Board staff held a teleconference for County Clerks to outline the procedures for the statewide recount of the office of Justice of the Supreme Court and to answer questions. The statewide recount began at 9:00 a.m. on Wednesday, April 27, 2011. The recount is anticipated to continue through Monday, May 9th which is the 13-day deadline for completing the recount. County Clerks were instructed to provide daily updates of the progress of the

recount, including total ballots cast, total votes cast for each candidate and total scattering votes. The updates were posted to the website nightly. on Monday, May 9, the recount deadline was extended by order of Dane County Circuit Court until Thursday, May 26, 2011, in order to give Waukesha additional time to complete its recount.

Additional information about the recount process is included in a separate report to the Board.

4. Extended Operating Hours to Support Clerk Partners and Voter Customers

Since the February 2008 Presidential Primary, G.A.B. has offered extended operating hours to local election partners and voter customers in order to provide more effective election support. For the April 5th and May 3rd elections, G.A.B. staff continued the practice of providing extended hours of services and technical support to our valued clerk customers and to the public before, during and immediately after any election. Staff's extended operating hours for both elections were as follows:

The April 5 Spring Election

- | | |
|----------------------------------|-----------------------------------|
| ▪ Friday, April 1m 2011: | 6:30 a.m. until 6:00 p.m. |
| ▪ Monday, April 4, 20`:` | 6:30 a.m. until 6:00 p.m. |
| ▪ Tuesday, April 5, 2011: | 6:30 a.m. until 10:00 p.m. |
| ▪ Wednesday, April 6, 2011: | 6:30 a.m. until 6:00 p.m. |

The May 3 Special Election

- | | |
|-------------------------------|----------------------------------|
| ▪ Monday, May 2, 2011: | 6:30 a.m. until 6:00 p.m. |
| ▪ Tuesday, May 3, 2011 | 6:30 a.m. until 9:00 p.m. |
| ▪ Wednesday, May 4, 2011 | 6:30 a.m. until 6:00 p.m. |

During the extended hours of operations, staff maintains an Election Activity Log of all calls relating to elections issues. A preliminary review of this data for the February 15, 2011 Spring Primary, April 5 Spring Election and Special Partisan Primary and May 3rd Special Election is being analyzed and the details will be posted on the G.A.B. website.

5. Recall Petitions

Information about recall petitions is included in a separate report to the Board.

6. MOVE Act: Status of Wisconsin's Compliance with the Military and Overseas Voter Empowerment (MOVE) Act

The Government Accountability Board staff has sent information to the Governor and Legislative Leaders regarding the need to adjust the election timeline for the September Partisan Primary, special elections, and Presidential Preference so that Wisconsin will be able to comply with the 45-day ballot preparation that is required by the MOVE Act. A Photo ID bill was introduced in the Assembly the first week in May that changes the date of the September Partisan Primary but did not update other election related items such as the date that ballots must be prepared. Staff will continue to provide feedback to the Legislature as legislation is introduced and amended.

7. 2010-2011 Four-Year Voter Record Maintenance

On April 29, 249,226 voters were mailed Notice of Suspension of Registration postcards. These voters were identified as not having voted in the past four years. The voters have 30 days to respond in order to continue their voter registrations. The Government Accountability Board printed and mailed the postcards on behalf all municipalities. The postcards are being returned to

the municipal clerks for processing. Additional details on the Four-Year Voter Record Maintenance are covered in the report as a separate agenda item.

Municipalities will receive and process the returned Four-Year Voter Record Maintenance mailings and Applications for Continuation for Registration. The 2010 General Election will be the last election where G.A.B. will conduct the Four-Year Voter Record Maintenance. For General Elections going forward, G.A.B. will continue to support clerks by identifying voters who qualify for the four-year record maintenance, and by providing uniform guidance for statewide consistency. Clerks, however, will be responsible for sending the Notices of Suspension of Registration and making updates to the voter records in their municipality.

Additional information about this project is included in a separate report to the Board.

8. Accessibility

On April 5, G.A.B. staff conducted onsite Accessibility compliance reviews in 11 counties (Columbia, Dane, Green, Green Lake, Jefferson, Lafayette, Milwaukee, Sauk, Vernon, and Waukesha) at 29 polling places. Similarly, on May 3, staff conducted onsite Accessibility compliance reviews in five counties (LaCrosse, Monroe, Ozaukee, Waukesha, and Washington), and visited 30 polling places in 28 municipalities. Additional information about this project is included in a separate report to the Board.

Training:

Staff are creating web-based election training for the absentee functionality in the Statewide Voter Registration System. The training will aid clerks to learn how to track absentee applications and ballots using the Statewide Voter Registration System. The training will include written step by step instructions and web-base video demonstrations.

Plans are that staff will implement the web-based election training this summer in four phases. Phase 1 will train on entering and processing absentee applications in SVRS. Phase 2 will train how to process specific types of absentee applications in SVRS. Phase 3 will focus on the different types of absentee vote locations. Phase 4 will concentrate on absentee ballots. GAB Staff has set August 31 as the project date for completing all the absentee web-base election training.

Please refer to the Attachment titled, "Training Summary," for additional training information.

Other Noteworthy Initiatives:

1. Voter Data Interface

Clerks continue to use SVRS to run HAVA Checks to validate against Department of Transportation (DOT) and Social Security Administration (SSA) records, and confirm matches with Department of Corrections (DOC) felon information and Department of Health Services (DHS) death data, as part of on-going HAVA compliance.

Clerks process HAVA Checks and confirm matches on a continuous basis during the course of their daily election administration tasks. This process has been followed since the Interfaces became functional in SVRS on August 6, 2008.

Since the last Board Meeting, clerks processed approximately 59,921 HAVA Checks with DOT/SSA on voter applications in SVRS. The number of HAVA Checks was higher during this period due to Election Day Registrations being processed from the February and April elections.

2. Retroactive HAVA Checks Status

As previously reported, Board staff is working with the Department of Transportation (DOT) to gather additional information to help resolve HAVA Check non-matches. Staff is taking a three-pronged approach to investigating and resolving the non-matches:

- DOT gave G.A.B. access to the Public Abstract Request System (PARS) look-up tool for G.A.B. to look up voters whose driver license does not match, so the driver license number can be corrected in SVRS. We are continuing to correct the non-driver license non-matches through PARS.
- DOT provided G.A.B. with a bulk file containing the names and dates of birth for all of the HAVA Check non-matches that resulted from names or dates of birth not matching. G.A.B. will do further analysis on the bulk file to group non-matches into categories to facilitate correction of the data. We will also be able to determine non-matches that result from name variations or typographical errors, versus truly different data which may require investigation.
- G.A.B. is working with DOT to enhance the existing HAVA Check such that DOT would not only provides the non-match reason (i.e. name, date of birth, or driver license number) but also provide the name and date of birth as it appears at DOT to assist clerks in resolving the non-matches. This proposed enhancement will need to be approved by the IT governance and management process for both agencies before we can proceed.

3. Voter Registration Statistics

As of Thursday, May 5, 2011, there were a total of 3,505,186 active voters in SVRS. There were 834,972 were inactive voters, and 265,259 were cancelled voters.

Note: An active voter is one whose name will appear on the poll list. An inactive voter is one who may become active again, e.g. convicted felon or someone who has not voted in four years. A cancelled voter is one who will not become active again, e.g. deceased person.

The number of total active voters in SVRS has slightly increased since the last report due to the daily work of clerk users and Board staff. Since the last Board meeting, there have been 2,236 merges completed in SVRS.

4. G.A.B. Help Desk

The G.A.B. Help Desk is supporting over 1,800 active SVRS users. The Help Desk staff assisted with processing the canvass, data requests and testing SVRS improvements. Help Desk staff is continuing to improve and maintain the two training environments that are being utilized in the field. Staff is monitoring state enterprise network status, assisting with processing data requests and processing voter verification postcards.

The majority of inquiries to the G.A.B. Help Desk during March, April and May from clerks were regarding assistance with setting-up the April 5, 2011 Spring Election and the May 3, 2011 Special Election, recall inquiries, recount inquiries, and running reports. On Election Day, there were considerably fewer calls than usual even for a Spring Election. Calls for this period also consisted of clerks requesting assistance entering data into the G.A.B. Canvass Reporting System and the Wisconsin Election Data Collection System (WEDCS), assistance reconciling election data, entering Election Day Registrations (EDR) and running reports. Help Desk staff assisted with configuring and installing SVRS on many new clerk computers due to the number of new WEDCS, Canvass Reporting and data entry users assisting clerks with EDR entry. The 4 Year Maintenance Postcard mailing of April 29 prompted many call from the public beginning May 2. 90% of May calls are regarding the postcard.

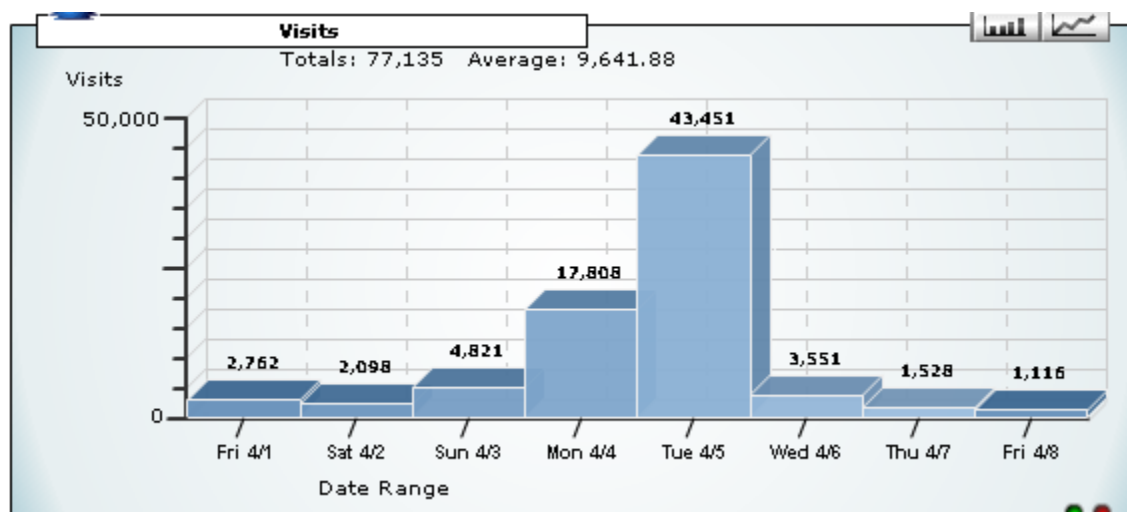
G.A.B. Help Desk Call Volume (261-2028)	
March 2011	1,060
April 2011	3,988
May (as of May 6, 2011)	714
Total Calls for Period	5,762

To alleviate distractions from the Reception Desk during the April Election, calls from the Front Desk's main number and the 800 number were transferred to the Help Desk. The Front Desk main number remains transferred due to the volume of activity at the front desk. The Help Desk operated on extended hours for both election events during this period.

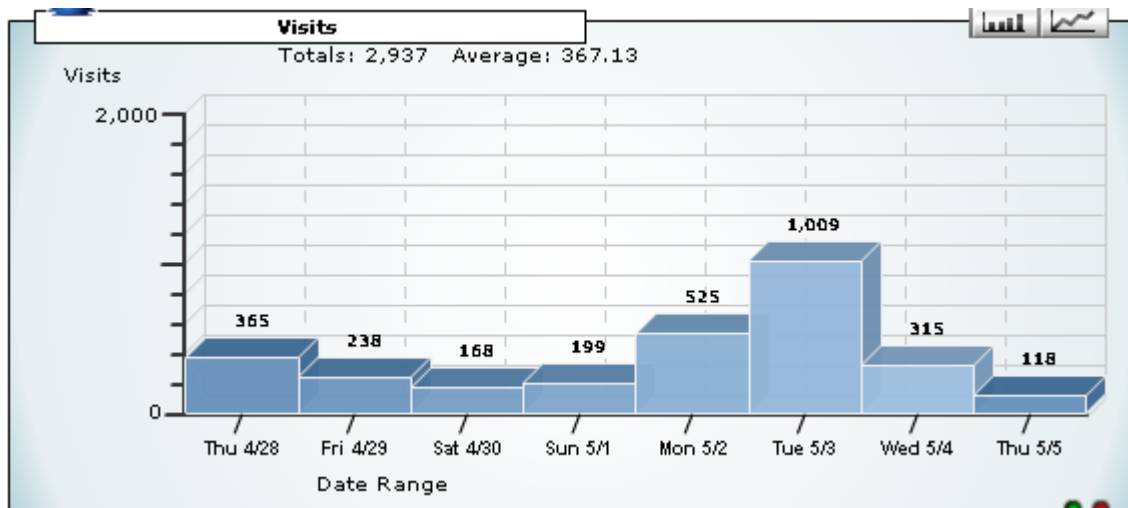
The number of inquiries to the G.A.B. main business telephone is below.

G.A.B. Reception Desk Call Volume (266-8005)	
March 2011	2,128
April 2011	76
May 2011 (Calls transferred to the Help Desk on April 4, 2011)	0
Total Calls for Period	2,204

The graph below illustrates voter activity accessing the GAB Voter Public Access (VPA) website for the week of the April 5 Spring Election. Statistics indicate unique visitors to the site.



The graph at the top of the following page illustrates voter activity accessing the GAB Voter Public Access (VPA) website for the week of the May 3 Special Election. Statistics indicate unique visitors to the site.



5. Enhanced Mail-In Voter Registration

Information about this project is included in a separate report to the Board.

6. SVRS Hardware Refresh

Beginning in early March 2011 G.A.B. and DET technical staff began the process of refreshing the SVRS server farm with new virtual servers and associated hardware. The Development Server (DEV), Systems Integration Testing Server (SIT) and User Acceptance Testing Server (UAT) environments have been rebuilt and migrated to the new SAN. The project is well on its way to meeting the June 30, 2011 deadline. The majority of Prod environment servers have been migrated to new virtual servers without the need for a service outage. The database servers will however require a service outage and are scheduled to be rebuilt on Saturday, May 21 through Monday May 23, 2011. SVRS will be unavailable to users during this period.

7. New Elections Division IT Team

The Elections Division has been working with a Department of Administration, Division of Enterprise Technology (DOA/DET) Team led by Herb Thompson to assemble a "team approach" to applications development and support for the Elections Division's IT Systems. I am excited to report that we are moving forward with making this vision a reality.

The new 4-member team will be co-managed by G.A.B. and DOA/DET (Herb), and will support all Elections Division software applications including SVRS, WEDCS, Canvass, Accessibility and any new IT tools the Division may need. The Team will also build capacity and functionalities within SVRS in order to process the 2010 Census redistricting results. Equally exciting, the Team will transfer the SVRS from a Citrix platform onto a web-based platform which will significantly boost performance and reduce operating costs.

Lance Larsen, the new Team Lead and Chief Architect started at G.A.B. on April 27. Dave Kassa, the 2nd member of the team will start later in May. Kamal Pasikanti, the current database administrator for SVRS has been retained and will continue on the team. The fourth member of the team will rotate based on the special technical needs that the Division may have at any given time.

8. Redistricting

The Wisconsin Legislature recently published the updated population data and census maps that resulted from the 2010 decennial Census, on March 21, 2011. This officially started the

redistricting clock. Counties have up to 60 days to enact a tentative redistricting plan. Municipalities are allotted up to the following 60 days to enact an ordinance or resolution establishing municipal wards. After that, counties and municipalities are given up to 60 days to establish election districts. These three steps should be completed by October 1, 2011. All local elections beginning January 1, 2012 must be managed from the newly established districts. The Wisconsin Legislature must complete the new legislative districts by early May 2012 so they can be used for the 2012 fall elections. The Legislature provided a Geographic Information System (GIS) tool for municipalities and counties to draw their new districts. The new districts will be available as GIS data files as soon as they are complete.

G.A.B. IT staff are working on modifications to SVRS to allow for the new boundaries to be imported directly into SVRS, alleviating the need for clerks to manually enter them. There are many system upgrades and changes that will be made during 2011 to prepare SVRS for the new districts. A Proof of Concept and planning report were prepared in 2010 by DOA/DET which provides the roadmap for these changes.

Staff will remain in close communication with clerks during the redistricting process to clerks are aware of the timelines. Clerks should not be changing any of the existing districts in SVRS at this time. The current districts will remain in place until the new districts are ready to be implemented (after October 1, 2011). Once the new districts have been imported, clerks will be given specific instructions on how to “tweak” and finalize their new district boundaries in SVRS.

6. SVRS Core Activities

A. Software Upgrade(s)

A new version of the Canvass Reporting System was installed on February 14, 2011. This new version made several updates requested by clerks to improve the canvassing process. A new version of the Wisconsin Election Data Collection System (WEDCS) was installed on March 6, 2011. The new version includes new validations that can be put on specific fields to assist in data entry (for example, if a clerk reports 150 ballots issued, they will need to enter a number smaller than that for the number of ballots returned, or undeliverable). The next version of SVRS (version 7.2) is planned to be installed in early May and will include the updates for the new Enhanced Mail-In Voter Registration process.

B. System Outages

There was an unscheduled, enterprise wide network service outage on April 6, 2011 causing an interruption that impacted users' access to SVRS. A 3750 switch located at DOJ partially failed causing a “broadcast storm” overwhelming other upstream switches connected to the network. This caused data routing to fail between all devices. The enterprise network and thus SVRS was unavailable from 12:45 pm to 2:00 pm.

Voicemail services were disrupted on Tuesday, April 5, 2011 beginning prior to 6:30 am and continuing through to sometime early Wednesday morning. No explanation was forthcoming from the Wisconsin Department of Administration or AT&T other than the system had to be completely rebuilt overnight. On Monday May 2, 2011, voicemail systems again were unavailable from 11:15 am to 12:30 pm. No AT&T explanation was given for the brief outage.

The next version of SVRS (version 7.2) is planned to be installed in late May and will include the updates for the new Enhanced Mail-In Voter Registration process.

C. Data Requests

Staff regularly receives requests from customers interested in purchasing electronic voter lists. SVRS has the capability and capacity to generate electronic voter lists statewide, for any county or municipality in the state, or by any election district, from congressional districts to school districts. The voter lists also include all elections that a voter has participated in, going back to 2006 when the system was deployed.

The following statistics demonstrate the activity in this area from the last Board report through May 5, 2011:

- Forty-six (46) inquiries were received requesting information on purchasing electronic voter lists from the SVRS system.
- Twenty-four (24) electronic voter lists were purchased.
- No paper voter lists were purchased.
- \$29,060 was received for the 46 electronic voter lists requested.

30-60 Day Forecast

1. Continue to assist Municipal Clerks, candidates and public to prepare for the recall elections.
2. Complete the statutorily required 4-year Voter Record Maintenance process.
3. Continue development of G.A.B.'s Enhanced Mail-In Voter Registration Initiative.
4. Continue collaboration with the Department of Transportation (DOT) to resolve the HAVA Check non-matches that remain from the Retroactive HAVA Check Project, as well as the HAVA Checks that municipal clerks run on a regular basis.
5. Prepare for the Board's May 23 and May 31 meeting during which time, recall petitions will be considered by the G.A.B.

Action Items

None.

ATTACHMENT #1

GAB Election Division's Training Initiatives 3/23/2011 – 5/16/2011

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Voter Registration	Basic training in adding voter registration applications, searching for voters, updated voters.	3 hours	Municipal and county clerks, staff and temp workers who provide election support only.	The WBETS site is available to train temporary workers.	85
WisLine	Series of 10 programs designed to keep local government officers up to date on the administration of elections in Wisconsin.	80 minute conference call, hosted by the UW Extension, conducted by Elections Division staff.	Clerks and chief inspectors; campaign treasurers and candidates.	March 23 2011: Recount How To's; May 11, 2011: What Every New Clerk Needs to Know and Didn't Know to Ask.	Average 200 per program broadcast; tapes are also ordered post-broadcast
WBETS	Web Based Election Training System. Still under development. Reference materials were made available to the clerks in February; voter registration training made available to clerks 3/24/2008.	Varies	County and municipal clerks and their staff.	Phase 1 of eLearning training plan close to completion; Phase 2 under discussion.	Site is available for clerks to train temp workers in data entry; relies are also able to access the site upon request.

ATTACHMENT #1

GAB Election Division's Training Initiatives 3/23/2011 – 5/16/2011

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
HAVA Interfaces	Instruction in the user of the interface functionality in SVRS to check death records, felon records, DOT records and duplicate records against voter records as part of HAVA compliance requirements.	2 hours	All clerks (staff as determined by clerk).	Pilot of web-based training presented to the Standards Committee on May 14, 2008. Lessons available online June 2, 2008.	Eventually 2000+
Other	<ul style="list-style-type: none"> Board staff working on continued development of the WBETS training site. Board staff working on migration of several training programs to online and DVD formats. 				

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JUDGE THOMAS H. BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: May 17, 2011

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Legal Counsel
Wisconsin Government Accountability Board

Prepared by: Jonathan Becker, Administrator
Ethics and Accountability Division

SUBJECT: Ethics and Accountability Division Program Activity

Campaign Finance Program

Richard Bohringer, Nate Judnic, Tracey Porter and Dennis Morvak,
Campaign Finance Auditors

2011 January Continuing Reports

1,390 committees were required to file a campaign finance report. As of May 10, we have received 1,334 campaign finance reports. Staff continues to follow-up with committees that have not filed campaign finance reports yet for the January Continuing 2011 report period. Out of the 85 committees identified in March, there are now 56 committees that have not filed campaign finance reports. The non-filers include 25 candidates, 8 political parties, 10 PACs, 9 corporations, and 4 conduits. Staff has made efforts to follow up with all committees that did not timely file. Phone calls and email attempts to follow-up with committees will continue. Any remaining non-filers will receive formal letters the week of May 16th and will be required to pay forfeitures.

Annual Filing Fees

Any non-candidate committee with annual expenses over \$2,500 is required to pay a \$100 filing fee. This fee was due on or before January 31, 2011. As of May 10, 2011, the G.A.B. has collected \$39,200 in filing fees. If this fee is not paid timely, the committee is required to pay a total of \$300 for filing fees, and up to a \$500 forfeiture. On May 10, 2011 staff sent letters to 161 committees that have not paid the required filing fee. An update on the filing fee collection process will be provided at the next meeting.

Spring Pre-Primary and Pre-Election Reports

Materials for the Spring Pre-Primary filing were sent to those candidates and committees participating in the Spring Primary election. 171 pre-primary reports were filed with the G.A.B.; 34 of those reports were filed by candidates. All candidates required to file a Spring Pre-Primary report have filed. This report covers campaign finance activity from January 1 through January 31, 2011 and was due on or before February 7, 2011.

Materials for the Spring Pre-Election filing were sent out to those candidates and committees participating in the Spring election and to those participating in the Special Election. 290 pre-election reports were filed with the G.A.B.; 34 of those reports were filed by candidates in the Spring Election and 6 of those reports were filed by candidates in the Special Election. All candidates required to file a Spring Pre-Election report have filed. This report covers campaign finance activity from February 1 through March 21, 2011 and was due on or before March 28, 2011.

Special Pre-Election Reports

Materials for the Special Pre-Election filing were sent out to those candidates and committees participating in the Special election. 166 Special pre-election reports were filed with the G.A.B.; 6 of those reports were filed by candidates in the Special Election. All candidates required to file a Spring Pre-Election report have filed. This report covers campaign finance activity from March 22 through April 18, 2011.

Recall Reports

Materials for the Recall finance reports were sent out to those committees participating in the Recall petition process and to those candidates whom a recall effort was pending against. Recall finance reports were filed as either Spring Pre-Election reports or Special Pre-Election reports due to the way the Campaign Finance Information System handles report periods. All candidates and committees required to file a Recall finance report have filed. These reports covered activity from February 1 through April 18, 2011.

2011 July Continuing Reports

Staff is currently preparing materials for the 2011 July Continuing report that will be sent to all candidates, PACs, parties, conduits, and sponsoring organizations. This report will cover their activity from the previously filed report through June 30, 2011. Filing notices will be sent to all active committees during the week of June 20, 2011. The report is due on July 20, 2011. Staff continues to answer questions and work with candidates, PACs, parties, conduits and corporations on registering and filing campaign finance information using the Campaign Finance Information System.

Lobbying Update

Tracey Porter, Ethics and Accountability Specialist

Statement of Lobbying Activities and Expenditures Reports

Lobbying principal organizations and lobbyists registered and licensed as of January 1, 2011 in this legislative session are required to complete and file a six month Statement of Lobbying Activities and Expenditures report covering lobbying activity and expenditures from January through June, 2011. These reports are due on or before August 1, 2011. Filing notices will be sent on July 1 to all lobbyists and lobbying organizations required to file, and email reminders will be sent throughout the month of July to those that have not filed. Staff continues to process matters that are the subject of lobbying communications reported by principal organizations as required by Chapter 13, *Wisconsin Statutes*.

Lobbying Registration and Reporting Information

Government Accountability Board staff continues to process 2011-2012 lobbying registrations, licenses and authorizations. Processing performance and revenue statistics related to this session's registration is provided in the table below.

2011-2012 Legislative Session: Lobbying Registration by the Numbers (Data Current as of May 10, 2011)			
	Number	Cost	Revenue Generated
Organizations Registered	686	\$375	\$257,250
Lobbyists Licenses Issued (Single)	570	\$350	\$199,500
Lobbyists Licenses Issued (Multiple)	117	\$650	\$76,050
Lobbyists Authorizations Issued	1444	\$125	\$180,500

New Lobbying Website Project Update

A significant amount of time has been allocated to develop the new lobbying application. Phase One, the public search feature, is now complete and ready for public comment. Staff has invited members of the lobbying community, members of the Joint Committee on Finance, and members of the Joint Committee on Information Policy and Technology to participate in a Focus Group presentation and discussion on the functionality of the public search feature of the new lobbying database on May 19, 2011. Work will continue throughout the summer months on the project, with release of the application scheduled for early 2012.

Financial Disclosure Update

Cindy Kreckow, Ethics and Lobbying Support Specialist

Statements of Economic Interests – Annual Filing

The Government Accountability Board Ethics and Accountability staff mailed more than 2,000 pre-printed Statements of Economic Interests to state public officials required to file a statement with the Board under Chapter 19, *Wisconsin Statutes*. This includes incumbent state judges who were up for re-election in the spring of 2011 as well as reserve judges who are required to file a statement within 21 days of taking a case. Those officials not up for re-election in the spring had their statements mailed to them over the course of eight weeks, beginning January 24, 2011. Statements were due on or before May 2nd, and as of Wednesday, May 11, 2011 there were 78 statements still outstanding. Staff will continue to process incoming statements throughout May and will follow up with those officials who have not filed a timely statement to obtain their 2011 form and determine if late filing penalties should apply. Data entry and processing into the online index is occurring only as time permits given budget restraints and staff shortage. Higher profile statements to include Legislators, Supreme Court Justices and District Attorneys will be entered first and additional prioritizing will occur once those are completed.

Quarterly Transaction Reports

Staff also sent out quarterly financial disclosure statements to 44 State Investment Board members and employees on March 31, 2011. These statements are to be completed and returned to the G.A.B. no later than May 2, 2011. As of Monday, May 9th all quarterly reports have been accounted for. Copies of all quarterly financial disclosure reports as well as statements of economic interests for employees and members of the Investment Board will be referred to the Legislative Audit Bureau.

Updating Officials Database: New Appointees and Governor Nominees

Jonathan Becker and Cindy Kreckow met with Governor's Appointment Staff early in the year to define a process for notification of new appointees and nominees as it relates to those who are required to file a statement of economic interests with the GAB. With the 2011 change in Administration, Cindy has been very busy getting new officials set up in the database and securing their statements of economic interests as well as identifying those officials who have departed.

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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the May 17, 2011, Meeting

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy, Director and General Counsel
Wisconsin Government Accountability Board

Prepared by: Kevin J. Kennedy, Director and General Counsel
Sharrie Hauge, Chief Administrative Officer
Reid Magney, Public Information Officer

SUBJECT: Administrative Activities

Agency Operations

Introduction

The primary administrative focus for this reporting period has been providing information to the Joint Committee on Finance and the Legislative Fiscal Bureau with regard to our 2011-13 biennial budget, preparing for the first quarter Contract Sunshine certification, updating our Continuity of Operations Plan, processing polling hour reimbursements, recruiting staff, communicating with agency customers, and developing legislative and media presentations. The agency staff has also been focused on recall and recount efforts.

Noteworthy Activities

1. 2011-13 Biennial Budget Update

On March 30, 2011, Director Kennedy provided his remarks to the Joint Committee on Finance (JCF) with regard to the agency's biennial budget. The major areas of concern for the agency are the lack of personnel resources and the 10% base budget reduction (\$112,600 GPR).

In order to address the 10% base budget reduction, Director Kennedy proposed we eliminate the polling place extended hours reimbursement program and transfer the funds to the agency base (\$91,800 GPR).

He also proposed that five (5) FTE permanent positions be funded with a combination of federal, GPR and program revenue money. These positions include a website administrator, an information technology specialist, two IT support staff (help desk) and an accountant. This would require legislative authorization and funding. The proposed funding mechanism for these positions is to eliminate the Wisconsin Election Campaign Fund and the Democracy Trust Fund programs.

On April 26, 2011, the JCF began its Executive Sessions for the 2011-2013 Biennial Budget. The Government Accountability Board's biennial budget was scheduled to be on the agenda May 5; however, it was postponed until May 12.

2. Contract Sunshine Program Update

Government Accountability Board staff continues to make great strides toward our goal of 100% compliance with Contract Sunshine reporting. The first quarter Contract Sunshine certification notice was e-mailed to all agencies on April 1. This certification period covered purchases and contracts made between January 1, 2011, and March 31, 2011. The certifications were due no later than April 15. As of May 10, we are happy to report that only one agency, the Department of Transportation (DOT), has failed to certify. That said, DOT is working on completing their automatic upload functionality and will certify upon successful testing and implementation of their automatic upload functionality. However, in the meantime, we have listed DOT on the Contract Sunshine website as a non-certifying agency. We will remove them from this listing upon completion of their certification.

Now that we are near 100% certification compliance, we will begin auditing the data submitted by agencies. As you are aware, Contract Sunshine has been the subject of a performance audit by the Legislative Audit Bureau (LAB). Among the components of this audit, the LAB examined the data in our system and tried to compare it to records held by other agencies. Upon the release of the audit's findings, G.A.B. staff will work with LAB staff to discuss their findings. One of the areas of discussion will be the methodology used by the LAB to audit other agency compliance with Contract Sunshine. G.A.B. staff will then take this methodology and input from other agencies, Board members and staff to put together an audit program for G.A.B. staff to administer.

3. Continuity of Operations Plan (COOP)

Each state agency is required to participate in the Continuity of Operations (COOP) planning to ensure both continuity of time sensitive services across a wide range of emergencies and events and the safety of agency employees. The Government Accountability Board staff continues to work diligently to ensure the agency is disaster and emergency ready.

The agency held its annual tornado drill on April 14, as part of a statewide public tornado drill. Agency staff received an e-mail the day prior to the tornado drill detailing warning and evacuation procedures. Evacuation procedures are posted at both stairwell exits of the agency. On the day of the drill, mock messages were sent to agency staff based upon the severe weather templates that would be used in the case of an actual emergency. When the mock tornado warning message was sent, the evacuation drill went into effect. Agency staff proceeded in an orderly fashion to our designated shelter area in the basement in under five minutes, and roll call went quickly and efficiently, minimizing disruption to agency function and service.

Along with other disaster planning, having ready access to important information is critical in the hours following an emergency event. In order to assure that our information is up to date, agency staff has recently been asked to update Emergency Contact information for agency staff. Inquiries were sent to all agency staff with their current contact information, and employees were asked to note any changes that may have happened since our last update. These updates were added to our master spreadsheet on May 10.

Finally, staff is beginning to look into a possible change to our alternate site planning in case of a disaster. An alternative site is a key component of disaster recovery plans. In the case of a disaster that were to destroy our physical location, an alternative site would allow us to continue operating while plans for new permanent worksite were finalized. Currently, our alternative site is located at 3099 East Washington Avenue. The top floor of this building is leased by the Department of Administration (DOA), and our plan is to occupy this space in the event of a disaster. However, DOA plans to end this lease, meaning that our alternative site plans must be adjusted. We are

currently waiting to see what DOA plans in terms of their new site, and whether or not we would be able to also designate this our alternative space. If we are unable to use their space or the cost is prohibitively high, agency staff will find new alternative space in the upcoming months.

4. Polling Hour Reimbursements

On March 4, 2011, staff began processing 377 Polling Hour reimbursement requests from the February primary. On April 27, 2011 the process was completed. The total amount reimbursed for the February primary was \$20,986.99 (an average of \$55 per request).

On April 27, 2011, staff began processing the 400 plus polling hour reimbursements for the Spring election. To date, 194 reimbursements have been processed totaling \$11,753.98 (an average \$60 per request).

5. Staffing

On April 25, Mike Lauth began his appointment as Accountant. His position is responsible for developing, monitoring and maintaining all accounting and financial records for HAVA federal funds as well as all other federal funding the agency receives.

On April 25, Ian Stewart began his appointment as Office Operations Associate. His position supports the HAVA program staff.

On May 2-5, we began first-round interviews for Barbara Hansen's position. We interviewed 18 applicants and recommended 7 finalists to participate in 2nd round interviews.

6. Communications Report

Since the March 22-23, 2011, Board meeting, the Public Information Officer has engaged in the following communications activities in furtherance of the Board's mission:

- The PIO responded to an unusually high number of media and public inquiries about several topics including: State Senate recalls, Supreme Court Election recount, the plea agreement and record forfeiture for the William Gardner and the Wisconsin & Southern Railroad, proposed voter photo ID legislation, the Spring Election, the Special Election for three Assembly seats. The PIO set up large, formal news conferences and smaller media availabilities; arranged print and electronic news media interviews for Mr. Kennedy and Mr. Becker; and also gave interviews when they were not available.
- The PIO maintained the recall portal page on the website (<http://gab.wi.gov/elections-voting/recall>) with information about which officials are eligible for recall, links to information about individual recall efforts, copies of the recall petitions, and other documents. Website traffic has been very high during this period, with the recall page receiving more than 54,000 views between March 24 and May 11.
- The PIO created and maintained a Supreme Court Recount portal page on the website (<http://gab.wi.gov/elections-voting/recount>) with county-by-county information about progress on the recount, as well as a Frequently Asked Questions section for clerks. Website traffic has been very high during this period, with the recall page receiving more than 36,000 views between March 24 and May 11.
- The PIO has been responding to a number of public records requests related to the Supreme Court recount.

- The PIO has also been working with the Ethics & Accountability Division Administrator to explore new web hosting options for the Division's *Eye on Lobbying* and *Campaign Finance Information System* websites.
- The PIO has also worked on a variety of other projects including responding to concerns from Legislators on a variety of topics and communicating with our clerk partners.

7. Meetings and Presentations

During the time since the last Board meeting, Director Kennedy has been participating in a series of meetings and working with agency staff on several projects. The primary focus of the staff meetings has been to address legislative issues including the activities at the Capitol in the past month. The agency has been inundated with inquiries on the propriety of actions by both sides of the budget repair bill. Currently the focus is on recall and recount issues.

The Director has had several meetings and discussions with legislators and legislative staff members on election reform proposals. This has also included discussion with the Legislative Council staff, Legislative Reference Bureau drafting attorneys and analysts with the Legislative Fiscal Bureau.

The media has made a number of inquiries on legislative initiatives as well as the rules, and costs associated with recall and the statewide recount. This has led to extended interviews with print journalists and a number of television and radio appearances. These included an April 1, 2011, appearance on Wisconsin Public Television related to recall initiatives, an April 6, 2011, Wisconsin Eye taping on a statewide recount and an April 15 appearance on the Mike Gousha show.

The Director and Jonathan Becker held a joint news conference with Milwaukee County District Attorney John Chisholm on the resolution of the Gardner investigation. Assistant District Attorney Bruce Landgraf also participated in the news conference. Mr. Gardner entered a guilt plea to two felonies. A pre-sentence investigation has been ordered and sentencing is set for July.

Staff Counsel Shane Falk appeared before the Joint Committee for the Review of Administrative Rules on April 27, 2011 to discuss consideration of GAB 1.91 relating to disclosure of political activity by corporations. The Director and Mr. Flak had met with legislators to discuss this proposed rule before Committee consideration

On April 27, 2011, the Director submitted written testimony for consideration on the Assembly version of the proposed photo identification legislation: 2011 Assembly Bill 7. A substitute amendment was introduced and adopted by the Assembly Committee on Elections and Campaign Reform on May 3, 2011. The director submitted written comments on the proposed changes. On May 9, 2011 the Joint Committee on Finance adopted a second substitute amendment to the legislation. The legislation as amended by JCF was scheduled for consideration in the Assembly on May 11, 2011.

On March 30 2011 the Joint Committee on Finance held a public hearing on the agency budget. The Director appeared and testified on the proposed agency budget submitted by the Governor. The Committee is scheduled to take executive action on the agency budget on May 12, 2011.

On March 23-25, 2011, the Director and Sarah Whitt attended a meeting sponsored by the Pew Charitable Trusts Center on the States on voter registration modernization in Phoenix, Arizona. This project has been ongoing since 2009. The goal is to establish a voter registration data sharing mechanism that will improve state voter registration data quality and facilitate voter registration by eligible citizens. Both of us have been participating in follow teleconference discussions on the

project. The Director has also participated in a teleconference meeting of the Pew Charitable Trusts Center on the States Performance Index for Election Administration Working Group.

On February 23, 2011, Chief Justice Shirley Abrahamson, selected the new members of the Government Accountability Candidate Committee. As required by law, the Chief Justice selected the Committee members by drawing the names of Court of Appeals Judges from each of the four appellate districts in the presence of all members of the State Supreme Court. Court of Appeals Judges Kitty Brennan (District 1), Richard Brown (District 2), Greg Peterson (District 3) and Brian Blanchard (District 4) will serve two-year terms that began March 1, 2011.

The Government Accountability Candidate Committee met on Tuesday, April 5, 2011, to select at least two nominees to fill the vacancy created by the expiration of Judge Gordon Myse's term on May 1, 2011. The Committee selected Judge Patricia McMahon and Judge Timothy Vocke. Subsequent to the initial selection, it was determined that Judge McMahon was not yet eligible to serve on the Board, because the term for which she was elected did not expire until after May 1, 2011. The Committee reconvened on April 7, 2011 and selected Judge Charles Dykman, Judge Dennis Luebke and Judge Timothy Vocke. The nominees were presented to the Governor whose selection is subject to confirmation by a two-thirds vote of the State Senate.

Looking Ahead

The staff will continue to complete the review of the unprecedented number of recall petitions as well as statewide recount of the April 5, 2011 spring election for Supreme Court Justice. The staff will also be engaged in implementing several provisions of the photo identification legislation that is expected to be passed, signed into law and published before the end of this fiscal year.

The Board's next meeting is on Monday May 23, 2011 beginning at 9:00 a.m. and Tuesday, May 31, 2011 at 8:30 am. The Board will review challenges, responses, replies and staff reports on the sufficiency of three recall petitions at the May 23, 2011, meeting and of six recall petitions at the May 31, 2011, meeting.

Two Board members have raised concerns about the timing of the July 25, 2011, meeting. Given the amplified workload in the office, I suggest Board members consider postponing this meeting until August. Possible dates for consideration are Tuesday, August 2, 2011, or Tuesday, August 9, 2011.

Action Items

Change the date of the July 25, 2011 Meeting.